

THE
REVISED CODES

OF THE

STATE OF NORTH DAKOTA

8165

1895

TOGETHER WITH

THE CONSTITUTION OF THE UNITED STATES AND OF THE
STATE OF NORTH DAKOTA

WITH THE AMENDMENTS THERETO

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

BISMARCK, NORTH DAKOTA
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PREFACE.

The year 1776 marks an event in our system of jurisprudence hardly less important than was the Declaration of Independence in civil government. In that year Jeremy Bentham published his criticism of Blackstone, which was in fact a criticism of "judge-made" law and an argument in favor of codification. From that time until his death in 1832, in a series of publications covering almost every department of law, Bentham marshalled the arguments in favor of reducing all law to a statutory form. Though codification has been the most prominent subject of legal discussion during the century, it is safe to say that not an argument in its favor has been made which cannot be found in the writings of its first advocate. Unheeded for a quarter of a century, toward the close of his life, Bentham drew to his support a brilliant school, composed of such men as Austin, John Stewart Mill, father and son, Macauley, Romilly, Brougham and Langdale. The extreme conservatism of England and the reaction against all innovation, caused by the atrocities of the French Revolution, prevented the early success of codification. The immediate effect of the teachings of Bentham and his associates was limited to comprehensive reforms in the existing system of law, instead of resulting in the adoption of that system for which he contended.

The writings of Bentham and Austin made a profound impression in the United States and were potent factors in producing great reforms in the law of practice and evidence. Codification, however, received only a casual and theoretical consideration at the hands of the great masters of American jurisprudence in the early part of this century. No person appeared among them to take up the subject with the zeal of a reformer. In the thirties it found such an advocate in David Dudley Field. He brought to this cause an enthusiasm akin to that of Garrison in the anti-slavery movement. To it he consecrated his life, placing it above personal gain or professional success. His first pamphlet was published in 1837 and so vigorous was the campaign which he carried on in the state of New York that his reform was made a part of the constitution of 1846. Section 17 of article 1 of that constitution, providing for a commission to codify the substantive law, read as follows:

"The legislature at its first session after the adoption of this constitution, shall appoint three commissioners whose duty it shall be to reduce into a written and systematic code, the whole body of the law of this state, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient; and the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the legislature when called upon to do so; and the legislature shall

pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of said commissioners, and shall also provide for the publication of the said code, prior to its being presented to the legislature for adoption."

Section 2 of article 6 of the constitution, providing for a commission on the subject of practice and pleadings, read as follows:

"The legislature at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this state, and to report thereon to the legislature, subject to their adoption and modification from time to time."

Pursuant to these constitutional provisions the legislature of New York in 1847 passed an act creating the two commissions, and the commissioners were appointed that year. Mr. Field was not a member of either commission as originally constituted, but one of the first appointees resigned immediately, and Mr. Field was appointed in his place as one of the commissioners on practice and pleading. This commission in 1848 reported the code of civil procedure which was adopted that year and which has been enacted in most of the states of the Union. The code of criminal procedure, which the commission reported the following year, was not adopted in New York until 1881.

More difficulty was experienced in securing commissioners to codify the substantive law. The first commission appointed in 1847 resigned. In 1849 a new act was passed providing for another commission, but John C. Spencer, one of its most prominent members refused to serve and in 1850 the commission was abolished by an act of the legislature. In 1857 another act was passed under which David Dudley Field, Wm. Curtis Noyes and Alexander W. Bradford were appointed commissioners to continue in office for five years and to prepare codes of all the law not covered by the work of the commission on practice and pleading. In April, 1862, the term of office of these commissioners was extended to 1865. In the last named year they reported to the legislature the draft of a political code, a penal code and a civil code. Of these the penal code alone has become a law in the state of New York though it was not adopted there until 1882. The civil code has twice passed the legislature and each time been vetoed, owing to the opposition of the bar.

This state is so largely indebted to California for modifications in its system of codes that it is proper to give a brief sketch of codification in that state. Stephen J. Field, a brother of David Dudley Field, was his law partner in New York City from 1841 to 1848, during the period of the latter's greatest activity in the cause of codification. In 1848 he removed to California. As a member of the judiciary committee of the first legislative assembly of that state he exercised a controlling influence over its legislation. He framed two acts on the subject of criminal and civil practice which became laws and were thereafter known in that state as the Civil and Criminal Practice Acts. They were modeled upon the codes of civil and criminal procedure drafted by the New York commission. In 1868 a commission was appointed to revise the laws of the state. This commission apparently did not accomplish much, for the next legislature passed an act creating another commission upon the same subject. The latter commission

reported to the legislature of 1872 four codes, the civil, political, penal and civil procedure, and the same were adopted March 12th, 1872, after having been revised by a joint committee of the legislature. "Adopt the codes and amend them afterwards," was the motto of the commission and of the legislative committee. The codes were to go into effect January 1st, 1873. In June, 1872, a commission was appointed to examine them and propose amendments for the consideration of the next legislature. Stephen J. Field, then a justice of the supreme court of the United States, was appointed one of the members of this commission. The commission organized at once and worked steadily at their task until October, 1873, when they reported to the governor what is known as "The Report of the Examiners of the Codes." This consisted of a draft of four acts, one to amend each of the codes. Their proposed amendments to the civil code covered eighty-eight pages, to the code of civil procedure one hundred and eight pages, to the penal code twenty-three pages and to the political code twenty pages. These amendments were adopted in 1874. The codes as thus amended, are the ones which are now familiar to the profession in this state.

In the early days of the territory of Dakota, the legislative assembly was as active on the subject of codification as the most ardent reformer could ask. Hardly a session passed during the first ten years—and the sessions were then annual—in which one or more codes were not introduced and adopted. These codes were taken either from those prepared by the New York commissioners, or from other states in which codes based on the work of the New York commissioners, had been adopted. The following is a record of the various enactments of this kind:

A code of civil procedure taken from Ohio was adopted at the first session of the legislative assembly in 1862. In 1868 this code was repealed and the code of civil procedure of New York adopted in its place.

A code of criminal procedure was also passed at the first session of the legislative assembly in 1862. The code thus adopted was repealed in 1869 and replaced by the code of criminal procedure prepared by the New York commissioners. This code was again amended and re-enacted in 1875.

A justices' code was adopted at the first session of the legislative assembly in 1862. This was repealed at the next session of the legislative assembly in 1863 and a new code adopted in its place. This again was repealed in 1866 and another complete code on the subject enacted.

A penal code was adopted at the second session of the legislative assembly in 1863. It was repealed in 1865 and the penal code drafted by the New York commissioners adopted in its place.

A probate code was adopted in 1865.

The civil code prepared by the New York commission was adopted in 1865, taking effect January 12th, 1866. The territory of Dakota was the first English community to adopt a codification of its substantive law. It has been quite generally supposed that California took the lead in this matter. This is a mistake, however, as the civil code was not adopted there until 1872.

All the above codes were adopted by the legislative assembly of Dakota without any revision by a commission and with only such adaptation to the other laws of the

territory as could be given by the legislative committees. Having been prepared with respect to a system of laws in New York and in many cases referring to other statutes of that state, the codes, as adopted by the territory, were incomplete and contained many provisions wholly inapplicable to the conditions of our people.

In 1875 an act was passed providing for a commission of three to revise the codes and statutes of the territory, (chapter 23 of the laws of 1874-5). Pursuant to this act the governor appointed P. C. Shannon, then chief justice of the supreme court of the territory, Granville G. Bennett, an associate justice of the supreme court, and Bartlett Tripp, as commissioners. They prepared the revision of 1877. In their work this commission was greatly aided by the system of codes which had just been adopted in California and most of the changes made by them were taken from that source.

Chapter 83 of the laws of 1887 provided for a commission to compile the laws of the territory. E. W. Caldwell and Charles H. Price were appointed as commissioners pursuant to this act and prepared the compilation of 1887. The act under which they served limited their powers to compilation and for this reason nothing was done by them either to supply deficiencies in the law or remove its repugnant provisions. By chapter 36 of the laws of 1889, this compilation was declared to be admissible in the courts of the territory as legal evidence of the statutes therein printed.

Upon the admission of the state of North Dakota, the necessity was at once felt of a commission to adapt the laws then in force to the constitution of the state and harmonize the large body of statutes which had been passed since the revision of 1877. Chapter 82 of the laws of 1891 provided for a commission of three to accomplish this object—two of the commissioners to be attorneys at law and one an experienced business man. The governor of the state appointed as commissioners under this act, P. H. Rourke of Lisbon, Robert M. Pollock of Casselton and J. G. Hamilton of Grand Forks. The commission organized at once, appointing J. F. Philbrick of Bismarck, secretary, and on the meeting of the legislative assembly in January, 1893, presented a report showing in detail those provisions of our statutory law which should be continued in force and those which should be repealed. They also prepared a large number of bills for the purpose of supplying deficiencies in the system of laws then in force and adapting those laws to the new constitution. Owing, however, to the protracted contest for the election of a United States senator during this session of the legislative assembly, nothing was done towards carrying the recommendations of the commission into effect.

The same session of the legislative assembly, (chapter 74 of the laws of 1893), provided for the present commission. The appointments were made in March of that year and soon after the commission organized and appointed Charles J. Fisk of Grand Forks, secretary. In carrying out the work, certain codes were assigned to each member. The probate and justices' codes were assigned to Mr. Corbet, the penal code and code of criminal procedure to Mr. Newton, and the civil code and code of civil procedure to Mr. Amidon. The political code was reserved for the joint action of the entire commission, with the assistance of its secretary. When the legislative assembly convened in January, 1895, the commission reported to

that body seven bills providing for seven different codes, embracing the entire statutory law of the state. A special joint committee was appointed to take charge of this work. Many changes were made by the committee and the legislative assembly in the report of the commission. The most important of these changes was the substitution of an entirely new system of revenue and taxation in the political code, which was made by the legislative assembly too late in the session for careful consideration.

In printing the codes the commission has indicated in the margin opposite each section the origin of any statute embraced in the codes, taken from the laws of the territory of Dakota or the state of North Dakota. Where entirely new matter was introduced by the present commission no reference whatever is contained in the margin.

In preparing this revision the commission has undertaken a task of great magnitude and difficulty. It involved much more than a mere compilation or rearrangement of pre-existing statutes. Not only have many changes been made in the form of existing law, but in each of the new codes a large number of provisions wholly new in this jurisdiction have been added. The period since our last revision in 1877 has been marked by great activity in legislation and codification. The codes embraced in that revision have been enacted in many other states, and before such enactment were subjected to careful revision and have since been largely modified by amendment. It has been the aim of the commission to bring the codes of this state down to date—to embody in them the improvements of other states, and add such new provisions as were necessary to give effect to our constitution and harmonize and complete our system of law. While fully expecting that experience will discover many imperfections in our work, we also trust that experience will show the revision to be a substantial improvement in the honorable work of our commonwealth in the cause of codification.

BURKE CORBET,
GEO. W. NEWTON,
CHARLES F. AMIDON.

ACT AUTHORIZING REVISION.

[Chapter 74, Session Laws of 1893.]

§ 1. As soon as practicable after the adjournment of the third regular session of the legislative assembly the governor shall appoint three revising commissioners, who shall be competent and reputable attorneys of this state, learned in the law and each of whom shall qualify by taking the constitutional oath of office and filing the same in the office of the secretary of state, and shall hold his office for the term of two years or until the duties herein prescribed shall be duly performed unless sooner determined by law; said commissioners shall constitute a board to be known as the revising commission, a majority of whom shall determine all questions properly arising before said board, but in case any vacancy shall occur in the office of either, the governor shall fill the same by appointment; provided, however, that it shall be his duty before making any appointment herein contemplated, to consult and advise with the judges of the supreme court as to the person or persons who ought to receive such appointment and the qualifications and relative fitness of persons proposed therefor.

§ 2. The revising commission while engaged in the performance of its duties, shall have charge of the report of the compilation committee made to this session of the legislative assembly; shall be furnished with suitable office room and other facilities in the city of Bismarck at public expense, and may whenever it shall deem necessary employ a competent clerk and stenographer.

§ 3. It shall be the duty of the revising commissioners:

1. To examine the laws reported by said committee for compilation and compare the same with the statutes of Dakota territory and the state of North Dakota with due reference, also, to the constitution and such other enactments as may affect their validity and make convenient notes of reference indicating what statutes or parts of statutes not in force, if any, are now included therein, what statutes or parts of statutes still in force are omitted therefrom, what changes are necessary by reason of the enactments of this session of the legislative assembly and generally what inconsistent, conflicting or superfluous provisions are to be found in the existing laws and what statutes or parts of statutes are of doubtful force or validity and make such further investigation as may be necessary to bring before them the real state of the law.

2. To revise the law generally, by rejecting all unnecessary, inharmonious, obsolete or otherwise objectionable enactments and reporting them in proper bill form for the purpose of repeal to the fourth session of the legislative assembly and adopting only those statutes or parts of statutes in distinct sections, which do not require change, and by preparing anew and embodying in connection therewith, upon any particular subject wherein it may be found necessary, such other provisions as may be required to avoid uncertainty and harmonize and complete the law according to its true intent; and all newly prepared matter so introduced shall be reported to the fourth legislative assembly in the form of appropriate bills for enactment or re-enactment, each of which shall designate by the proper number or numbers the section or sections of the Revised Codes for which it is intended.

3. To codify the laws so adopted and revised by excluding the titles, enacting clauses, and other formal and unnecessary parts of the several statutes in their

original form and including only the substantive enactments, and by classifying and arranging them in distinct sections and chapters and with such other subdivisions as may be deemed proper under the following general titles, namely: The political code, the civil code, the code of civil procedure, the probate code, the justices' code, the penal code and the code of criminal procedure, in which the sections shall be designated by a progressive series of numbers from one upward through all of said codes without regard to any former numbering thereof and the chapters shall be numbered in like manner through each code.

4. To prepare the same in proper form to be used by the printer for publication in one octavo volume, to be known as the Revised Codes of North Dakota, with proper titles, sub-titles, numbers and marginal notes, duly introduced, prefixed and arranged with reference to the subject matter; but no syllabic references shall be prefixed at the heads of chapters or subdivisions of chapters or annexed as marginal notes, but in lieu thereof there shall be prefixed to each section, immediately after its designating number, apt words briefly indicating the subject matter thereof and such number and "catch" words shall be printed in heavy faced type; and there shall be set opposite each section brief marginal notes referring to the corresponding section and amendments thereto, if any, or former enactment as found in the codes or statutes of Dakota territory, or statutes of North Dakota, and indicating also whether the section to which they are annexed is adopted without change, or as a modification of, or substitute for, the former enactment referred to.

§ 4. As soon as practicable after the adjournment of the fourth regular session of the legislative assembly, said revising commissioners shall complete their codification by incorporating therein the general laws passed at said session in the manner hereinbefore prescribed, and revising the numbering thereof if necessary, and prepare and add to the same an accurate and comprehensive index, and such other facilities for reference as they may deem proper, and secure the printing and binding of two thousand five hundred copies of said volume of the Revised Codes, in which there shall be also printed the constitution of the United States, the enabling act and the constitution of the state of North Dakota, and the whole shall be bound in law sheep on heavy paper covers. They shall also supervise the printing and binding thereof, by carefully correcting and revising the proof sheets as they issue from the press, and by final proof reading before binding, and by otherwise taking care that the work is well and faithfully executed.

§ 5. The contract for such printing and binding shall be made, subject to the approval of the governor, with the lowest and best bidder for the work, after advertisement for proposals in at least three newspapers of this state for one month prior to the letting thereof, and shall designate the size of the volume, the kind and quality of paper, the quality and style of binding and style and sizes of type to be used in the work, and the commissioners shall require such security as they shall deem sufficient for its faithful execution, and shall have power to reject any or all proposals and readvertise and secure further bids.

§ 6. Said commissioners shall certify to the governor the amounts payable on their contract for printing and binding as they become due, and upon the governor's approval thereof the auditor shall issue his warrants upon the treasurer for the sums so certified.

§ 7. The printed copies shall be delivered when completed to the secretary of state, and the governor shall issue his proclamation announcing the delivery and his acceptance of such copies, and thirty days after the date of his proclamation said revised codes shall take effect and thereafter be in force and be received as evidence of the laws of this state in all courts thereof.

§ 8. The secretary of state shall make distribution of said printed copies pursuant to the law for distribution of the session laws, and shall hold for sale and

sell the remaining copies to residents of the state for the price per copy paid for printing and binding and to other persons at twenty-five per cent higher price.

§ 9. Each of said commissioners shall receive compensation for his services performed under the provisions of this act in the sum of two thousand five hundred dollars per year, due and payable quarterly at the end of each quarter upon duly verified accounts and vouchers approved by the governor, and their incidental expenses for postage, stationery or other matters in the performance of their duties shall be paid in like manner. Their clerk shall receive compensation at the rate of one thousand two hundred dollars, and stenographer eight hundred dollars per year, due and payable in like manner upon accounts certified by the commissioners, and the auditor is hereby directed to draw his warrants upon the state treasurer accordingly.

§ 10. Chapter 82 of the laws of 1890, state of North Dakota, entitled "An act to provide for the compilation, publication, distribution and sale of the laws of the state of North Dakota," approved March 10, 1891, is hereby repealed.

§ 11. Whereas, an emergency exists in this that it is necessary that the appointments herein contemplated shall be made long prior to July 1, 1893; therefore, this act shall take effect and be in force from and after the date of its passage and approval.

Approved, March 1, 1893.

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

PREAMBLE.

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WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.—THE CONGRESS.

§ 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

§ 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years, and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the

CONSTITUTION OF THE UNITED STATES.

senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year: and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

§ 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house during the session of congress 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.

§ 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during

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such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

§ 7. All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8. The congress shall have power:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

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To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia, according to the discipline prescribed by congress.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

§ 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

§ 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2.—THE EXECUTIVE.

§ 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives

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to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

§ 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

§ 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ 4. The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

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ARTICLE 3. — THE JUDICIARY.

§ 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

§ 2. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury: and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

§ 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, 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 on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE 4. — THE STATES AND TERRITORIES.

§ 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

§ 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

§ 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

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The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE 5. — AMENDMENTS.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE 6. — MISCELLANEOUS PROVISIONS.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 7. — RATIFICATION.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

AMENDMENTS OF THE CONSTITUTION.

ARTICLES

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

ARTICLE 4.

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 warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

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ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 9.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE 12.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE 13.

§ 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

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§ 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE 14.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

§ 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States or any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE 15.

§ 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.

§ 2. The congress shall have power to enforce this article by appropriate legislation.

NOTE—The constitution was adopted September 17, 1787, by the unanimous consent of the states present in the convention appointed in pursuance of the resolution of the congress of the confederation, of February 21, 1787, and was ratified by the conventions of the several states, as follows, viz: By convention of Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

The first ten of the amendments were proposed at the first session of the first congress of the United States, September 25, 1789, and were finally ratified by the constitutional number of states, December 15, 1791.

The eleventh amendment was proposed at the first session of the third congress, March 5, 1794, and was declared in a message from the president of the United States to both houses of congress, dated January 8, 1798, to have been adopted by the constitutional number of states.

The twelfth amendment was proposed at the first session of the eighth congress, December 12, 1803, and was adopted by the constitutional number of states in 1804, according to a public notice thereof by the secretary of state, dated September 25, 1804.

The thirteenth amendment was proposed at the second session of the thirty-eighth congress, February 1, 1865, and was adopted by the constitutional number of states in 1865, according to a public notice thereof by the secretary of state, dated December 18, 1865.

The fourteenth amendment took effect July 28, 1868. The fifteenth amendment took effect March 30, 1870.

THE ENABLING ACT.

[Approved Feb 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.

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.

§ 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.

§ 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 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.

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§ 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 Fourth 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 be repugnant to the constitution of the United States and the principles of the declaration of independence. And said convention 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 provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

§ 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 shall 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 resubmit 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

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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.

§ 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 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 amount 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.

§ 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.

§ 8. That 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

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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.

§ 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 to 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.

§ 10. That upon the admission of each of said states into the union, sections numbered sixteen and thirty-six in every township of said proposed states, and where such sections or any parts 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.

§ 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 regulations as the legislature shall prescribe, be leased for periods of not more than five years,

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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.

§ 12. That upon the admission of each of said states into the union, in accordance with the provisions 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.

§ 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.

§ 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 lands 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 the 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.

• § 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 money 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 purpose, 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.

§ 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

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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 purpose.

§ 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 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 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 a 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 state normal schools, 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 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.

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or 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 states.

§ 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.

§ 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

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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.

§ 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 courts 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. The 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.

§ 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, or to the supreme court of the Territory 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 mense 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

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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.

§ 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 district 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 with, in 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 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 in the proper state courts.

§ 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 the manner required by law; 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 such 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.

§ 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.

CONSTITUTION OF THE STATE OF NORTH DAKOTA.

[Adopted Oct. 1, 1889; yeas, 27,441; nays, 8,107.]

WE, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

ARTICLE 1.—DECLARATION OF RIGHTS.

§ 1. All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; and pursuing and obtaining safety and happiness.

§ 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

§ 3. The State of North Dakota is an inseparable part of the American union and the constitution of the United States is the supreme law of the land.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

§ 5. 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.

§ 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

§ 7. The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law.

§ 8. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

§ 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

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§ 10. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

§ 11. All laws of a general nature shall have a uniform operation.

§ 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

§ 13. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

§ 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

§ 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

§ 18. 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 oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

§ 19. Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

§ 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

§ 21. The provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.

§ 22. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

§ 23. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

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§ 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

ARTICLE 2. — THE LEGISLATIVE DEPARTMENT.

§ 25. The legislative power shall be vested in a senate and house of representatives.

§ 26. The senate shall be composed of not less than thirty nor more than fifty members.

§ 27. Senators shall be elected for the term of four years, except as hereinafter provided.

§ 28. No person shall be a senator who is not a qualified elector in the district in which he may be chosen, and who shall not have attained the age of twenty-five years, and have been a resident of the state or territory for two years next preceding his election.

§ 29. The legislative assembly shall fix the number of senators, and divide the state into as many senatorial districts as there are senators, which districts as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.

§ 30. The senatorial districts shall be numbered consecutively from one upwards, according to the number of districts prescribed, and the senators shall be divided into two classes. Those elected in the districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class. The senators of one class elected in the year 1890 shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the senators, as nearly as practicable, may be elected biennially.

§ 31. The senate, at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tempore, who may take the place of the lieutenant governor under rules prescribed by law.

§ 32. The house of representatives shall be composed of not less than sixty, nor more than one hundred and forty members.

§ 33. Representatives shall be elected for the term of two years.

§ 34. No person shall be a representative who is not a qualified elector in the district from which he may be chosen, and who shall not have attained the age of twenty-one years, and have been a resident of the state or territory for two years next preceding his election.

§ 35. The members of the house of representatives shall be apportioned to and elected at large from each senatorial district. The legislative assembly shall, in the year 1895, and every tenth year, cause an enumeration to be made of all the inhabitants of this state, and shall at its first regular session after each such enumeration, and also after each federal census, proceed to fix by law the number of senators, which shall constitute the senate of North Dakota, and the number of representatives which shall constitute the house of representatives of North Dakota, within the limits prescribed by this constitution, and at the same session shall proceed to reapportion the state into senatorial districts, as prescribed by this constitution, and to fix the number of members of the house of representatives, to be elected from the several senatorial districts; provided, that the legislative

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assembly may, at any regular session, redistrict the state into senatorial districts, and apportion the senators and representatives respectively.

§ 36. The house of representatives shall elect one of its members as speaker.

§ 37. No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state, except in the militia or the office of attorney at law, notary public or justice of the peace, and no person holding any office of profit or honor 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, shall hold any office in either branch of the legislative assembly or become a member thereof.

§ 38. No member of the legislative assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime, shall be eligible to the legislative assembly, or to any office in either branch thereof.

§ 39. No member of the legislative assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this 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, or governor and senate, during the term for which he shall have been elected.

§ 40. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measure or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person, member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

§ 41. The term of service of the members of the legislative assembly shall begin on the first Tuesday in January, next after their election.

§ 42. The members of the legislative assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house, they shall not be questioned in any other place.

§ 43. Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house.

§ 44. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly.

§ 45. Each member of the legislative assembly shall receive as a compensation for his services for each session, five dollars per day, and ten cents for every

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mile of necessary travel in going to and returning from the place of the meeting of the legislative assembly on the most usual route.

§ 46. 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 a penalty, as may be prescribed by law.

§ 47. Each house shall be the judge of the election returns and qualifications of its own members.

§ 48. Each house shall have the power to determine the rules of proceeding, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds, to expel a member; and shall have all other powers necessary and usual in the legislative assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

§ 49. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present.

§ 50. The sessions of each house and of the committee of the whole shall be open unless the business is such as ought to be kept secret.

§ 51. 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, except in case of epidemic, pestilence or other great danger.

§ 52. The senate and house of representatives jointly shall be designated as the Legislative Assembly of the State of North Dakota.

§ 53. The legislative assembly shall meet at the seat of government at 12 o'clock noon on the first Tuesday after the first Monday in January, in the year next following the election of the members thereof.

§ 54. In all elections to be made by the legislative assembly, or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal.

§ 55. The sessions of the legislative assembly shall be biennial, except as otherwise provided in this constitution.

§ 56. No regular session of the legislative assembly shall exceed sixty days, except in case of impeachment, but the first session of the legislative assembly may continue for a period of one hundred and twenty days.

§ 57. Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other.

§ 58. No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose.

§ 59. The enacting clause of every law shall be as follows: "Be it Enacted by the Legislative Assembly of the State of North Dakota."

§ 60. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced.

§ 61. No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.

§ 62. The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

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§ 63. Every bill shall be read three several times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill unless a reading at length be demanded. The first and third readings shall be at length. No legislative day shall be shorter than the natural day.

§ 64. No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.

§ 65. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal.

§ 66. 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 legislative assembly; immediately before such signing their title shall be publicly read and the fact of signing shall be at once entered on the journal.

§ 67. No act of the legislative assembly shall take effect until July 1st, after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislative assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct.

§ 68. The legislative assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

§ 69. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

1. For granting divorces.
2. Laying out, opening, altering, or working roads or highways, vacating roads, town plats, streets, alleys or public grounds.
3. Locating or changing county seats.
4. Regulating county or township affairs.
5. Regulating the practice of courts of justice.
6. Regulating the jurisdiction and duties of justices of the peace, police magistrates or constables.
7. Changing the rules of evidence in any trial or inquiry.
8. Providing for changes of venue in civil or criminal cases.
9. Declaring any person of age.
10. For limitation of civil actions, or giving effect to informal or invalid deeds.
11. Summoning or impaneling grand or petit juries.
12. Providing for the management of common schools.
13. Regulating the rate of interest on money.
14. The opening or conducting of any election or designating the place of voting.
15. The sale or mortgage of real estate belonging to minors or others under disability.
16. Chartering or licensing ferries, toll bridges or toll roads.
17. Remitting fines, penalties or forfeitures.
18. Creating, increasing or decreasing fees, percentages or allowances of public officers.
19. Changing the law of descent.
20. Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever.
21. For the punishment of crimes.
22. Changing the names of persons or places.
23. For the assessment or collection of taxes.

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24. Affecting estates of deceased persons, minors or others under legal disabilities.
 25. Extending the time for the collection of taxes.
 26. Refunding money into the state treasury.
 27. Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein.
 28. Legalizing, except as against the state, the unauthorized or invalid act of any officer.
 29. Exempting property from taxation.
 30. Restoring to citizenship persons convicted of infamous crimes.
 31. Authorizing the creation, extension or impairing of liens.
 32. Creating offices, or prescribing the powers or duties of officers in counties, cities, townships, election or school districts, or authorizing the adoption or legitimation of children.
 33. Incorporation of cities, towns or villages, or changing or amending the charter of any town, city or village.
 34. Providing for the election of members of the board of supervisors in townships, incorporated towns or cities.
 35. The protection of game or fish.
- § 70. In all other cases where a general law can be made applicable, no special law shall be enacted; nor shall the legislative assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

ARTICLE 3. — EXECUTIVE DEPARTMENT.

§ 71. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of two years and until his successor is elected and duly qualified.

§ 72. A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or the 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 be removed, shall devolve upon the lieutenant governor.

§ 73. No person shall be eligible to the office of governor or lieutenant governor unless he be a citizen of the United States, and a qualified elector of the state, who shall have attained the age of thirty years, and who shall have resided five 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.

§ 74. 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 legislative assembly. The persons having the highest number of votes for governor and lieutenant governor respectively shall be declared 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 legislative assembly 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.

§ 75. 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 the laws, suppress insurrection and repel invasion. He shall have power to convene the legislative assembly on extraordinary occasions. He shall at the commencement of each session communi-

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cate to the legislative assembly by message, information of the condition of the state, and 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 legislative assembly and shall take care that the laws be faithfully executed.

§ 76. The governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. He shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime for 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.

§ 77. The lieutenant governor shall be president of the senate, but shall have no vote unless they be equally divided. 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.

§ 78. 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 power to fill such vacancy by appointment.

§ 79. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign, but if not, he shall return it with his objections, to the house in which it originated, which shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members-elect shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members-elect, 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 legislative assembly, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections, in the office of the secretary of state, within fifteen days after such adjournment.

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

§ 81. 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

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consideration that any member of the legislative assembly 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 legislative assembly, or who threatens any member that he, the said governor, will remove any person or persons from office or position with intent in any manner to influence the 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.

§ 82. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, three commissioners of railroads, an attorney general and one commissioner of agriculture and labor, who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and duly qualified, but no person shall be eligible to the office of treasurer for more than two consecutive terms.

§ 83. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general, and commissioner of agriculture and labor, shall be as prescribed by law.

§ 84. Until otherwise provided by law, the governor shall receive an annual salary of three thousand dollars; the lieutenant governor shall receive an annual salary of one thousand dollars; the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads and attorney general shall each receive an annual salary of two thousand dollars; the salary of the commissioner of agriculture and labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the state treasury.

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ARTICLE 4. — JUDICIAL DEPARTMENT.

§ 85. The judicial power of the State of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

§ 86. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive 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.

§ 87. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; provided, however, that no jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial.

§ 88. Until otherwise provided by law three terms of the supreme court shall be held each year, one at the seat of government, one at Fargo, in the county of Cass, and one at Grand Forks, in the county of Grand Forks.

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§ 89. The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.

§ 90. The judges of the supreme court shall be elected by the qualified electors of the state at large, and except as may be otherwise provided herein for the first election for judges under this constitution, said judges shall be elected at general elections.

§ 91. The term of office of the judges of the supreme court, except as in this article otherwise provided, shall be six years, and they shall hold their offices until their successors are duly qualified.

§ 92. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot so that one shall hold his office for the term of three years, one for the term of five years, and one for the term of seven years from the first Monday in December, A. D. 1889. The lots shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of the territory and filed in his office, unless the secretary of state of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

§ 93. 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 their offices during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by rules of the supreme court not inconsistent with law. The legislative assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof.

§ 94. 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 and a citizen of the United States, nor unless he shall have resided in this state or the Territory of Dakota three years next preceding his election.

§ 95. Whenever the population of the State of North Dakota shall equal 600,000 the legislative assembly shall have the power to increase the number of the judges of the supreme court to five, in which event a majority of said court, as thus increased, shall constitute a quorum.

§ 96. No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

§ 97. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude "against the peace and dignity of the State of North Dakota."

§ 98. Any vacancy happening by death, resignation or otherwise in the office of judge of the supreme court shall be filled by appointment, by the governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

§ 99. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation shall not be increased or diminished during the term for which a judge shall have been elected.

§ 100. In case a judge of the supreme court shall be in any way interested in a cause brought before said court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause.

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§ 101. When a judgment or decree is reversed or confirmed by the supreme court, every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

§ 102. It shall be the duty of the court to prepare a syllabus of the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

§ 103. The district courts shall have original jurisdiction, except as otherwise provided in this constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same.

§ 104. The state shall be divided into six judicial districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this constitution.

§ 105. Until otherwise provided by law said districts shall be constituted as follows:

District No. One shall consist of the counties of Pembina, Cavalier, Walsh, Nelson and Grand Forks.

District No. Two shall consist of the counties of Ramsey, Towner, Benson, Pierce, Rolette, Bottineau, McHenry, Church, Renville, Ward, Stevens, Mountrail, Garfield, Flannery and Buford.

District No. Three shall consist of the counties of Cass, Steele and Traill.

District No. Four shall consist of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

District No. Five shall consist of the counties of Logan, LaMoure, Stutsman, Barnes, Wells, Foster, Eddy and Griggs.

District No. Six shall consist of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Williams, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux, Indian reservation lying north of the seventh standard parallel.

§ 106. The legislative assembly may whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years increase the number of said judicial districts and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

§ 107. No person shall be eligible to the office of district judge, 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 within the State or Territory of Dakota at least two years next preceding his election, nor unless he shall at the time of his election be an elector within the judicial district for which he is elected.

§ 108. There shall be a clerk of the district court in each organized county in which a court is holden who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

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

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COUNTY COURTS.

§ 110. There shall be established in each county a county court, which shall be a court of record, open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

§ 111. The county court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law; provided, that whenever the voters of any county having a population of two thousand or over shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this constitution, then said county court shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed one thousand dollars, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under state laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except that he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

JUSTICES OF THE PEACE.

§ 112. The legislative assembly shall provide by law for the election of justices of the peace in each organized county within the state. But the number of said justices to be elected in each organized county shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs, does not exceed two hundred dollars, and in counties where no county court with criminal jurisdiction exists they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere.

POLICE MAGISTRATES.

§ 113. The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns, and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages, shall be ex-officio justices of the peace of the county in which said cities, towns and villages may be located. And the legislative assembly may confer upon said police magistrates the jurisdiction to hear, try and determine all cases of misdemeanors, and the prosecutions therein shall be by information.

§ 114. Appeals shall lie from the county court, final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

MISCELLANEOUS PROVISIONS.

§ 115. The time of holding courts in the several counties of a district shall be as prescribed by law, but at least two terms of the district court shall be held

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annually in each organized county, and the legislative assembly shall make provision for attaching unorganized counties or territories to organized counties for judicial purposes.

§ 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.

§ 117. No judge of the supreme or district court shall act as attorney or counsellor at law.

§ 118. Until the legislative assembly shall provide by law for fixing the terms of courts, the judges of the supreme and district courts shall fix the terms thereof.

§ 119. No judge of the supreme or district courts shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge. All votes or appointments for either of them for any elective or appointive office except that of judge of the supreme court or district court, given by the legislative assembly or the people, shall be void.

§ 120. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

ARTICLE 5. — ELECTIVE FRANCHISE.

§ 121. Every male person of the age of twenty-one years or upwards belonging to either of the following classes, who shall have resided in the state one year, in the county six months and in the precinct ninety days next preceding any election, shall be deemed a qualified elector at such election:

1. Citizens of the United States.

2. Persons of foreign birth who shall have declared their intention to become citizens, one year and not more than six years prior to such election, conformably to the naturalization laws of the United States.

3. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.

§ 122. The legislative assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime without regard to sex; but no law extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the state voting at a general election.

§ 123. Electors shall in all cases except treason, felony, breach of the peace or illegal voting, be privileged from arrest on the days of election during their attendance at, going to and returning from such election, and no elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

§ 124. The general elections of the state shall be biennial, and shall be held on the first Tuesday after the first Monday in November; provided, that the first general election under this constitution shall be held on the first Tuesday after the first Monday in November, A. D. 1890.

§ 125. 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.

§ 126. 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 his being stationed therein.

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§ 127. No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, unless restored to civil rights.

§ 128. Any woman having the qualifications enumerated in section 121 of this article as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office.

§ 129. All elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law.

ARTICLE 6.—MUNICIPAL CORPORATIONS.

§ 130. The legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money and contracting debts, and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

ARTICLE 7.—CORPORATIONS OTHER THAN MUNICIPAL.

§ 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

§ 132. 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.

§ 133. The legislative assembly shall not remit the forfeiture of the charter to 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.

§ 134. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislative assembly 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 this state shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the state.

§ 135. 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.

§ 136. No foreign corporation shall do business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

§ 137. No corporation shall engage in any business other than that expressly authorized in its charter.

§ 138. No corporation shall issue stock 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.

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§ 139. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant 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 for such purposes.

§ 140. Every railroad corporation organized and doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock 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, and 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 and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; provided, the provisions of this section shall not be so construed as to apply to foreign corporations.

§ 141. 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 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.

§ 142. Railways heretofore constructed, or that may hereafter be constructed, in this state are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone, and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers, from one point to another in this state; provided, that appeal may be had to the courts of this state from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

§ 143. 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; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

§ 144. The term "corporation," as used in this article, shall not be understood as embracing municipalites or political subdivisions of the state unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

§ 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the state treasurer for the redemption of such notes or bills.

§ 146. Any combination between individuals, corporations, associations or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public

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policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

ARTICLE 8.—EDUCATION.

§ 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the State of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

§ 148. The legislative assembly shall provide, at its first session after the adoption of this constitution, for a uniform system for free public schools throughout the state; beginning with the primary and extending through all grades up to and including the normal and collegiate course.

§ 149. In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

§ 150. A superintendent of schools for each county shall be elected every two years, whose qualifications, duties, powers and compensation shall be fixed by law.

§ 151. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific and agricultural improvements.

§ 152. All colleges, universities and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.

ARTICLE 9.—SCHOOL AND PUBLIC LANDS.

§ 153. All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the state by escheat; the proceeds of all gifts and donations to the state for common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual fund for the maintenance of the common schools of the state. It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The state shall make good all losses thereof.

§ 154. 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 common schools of the state, and shall be for this purpose apportioned among and between all the several common 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 shall ever be diverted even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the state; provided, however, that if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to and become a part of the school fund.

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§ 155. After one year from the assembling of the first legislative assembly the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other. No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the state shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words "coal lands" shall include lands bearing lignite coal.

§ 156. The superintendent of public instruction, governor, attorney general, secretary of state and state auditor shall constitute a board of commissioners, which shall be denominated the "Board of University and School Lands," and, subject to the provisions of this article and any law that may be passed by the legislative assembly, said board shall have control of the appraisement, sale, rental and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the state treasurer, under the limitations in section 160 of this article.

§ 157. The county superintendent of common schools, the chairman of the county board, and the county auditor shall constitute boards of appraisal and under the authority of the state board of university and school lands shall appraise all school lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms and shall first select and designate for sale the most valuable lands.

§ 158. No land shall be sold for less than the appraised value and in no case for less than \$10 per acre. The purchaser shall pay one-fifth of the price in cash and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and 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 one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be re-appraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall become null and void.

§ 159. All land, money or other property donated, granted or received from the United States or any other source for a university, school of mines, reform school, agricultural college, deaf and dumb asylum, normal school 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 thereof.

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§ 160. All lands mentioned in the preceding section shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools; but a distinct and separate account shall be kept by the proper officers of each of said funds; provided, that the limitations as to the time in which school land may be sold shall apply only to lands granted for the support of common schools.

§ 161. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

§ 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within the state, bonds of the United States, bonds of the State of North Dakota or in first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisers of school lands.

§ 163. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish, either directly or indirectly, the purchase price of said lands.

§ 164. The legislative assembly shall have authority to provide by law for the sale or disposal of all public lands that have been heretofore, or may hereafter be granted by the United States to the state for purposes other than set forth and named in sections 153 and 159 of this article. And the legislative assembly, in providing for the appraisement, sale, rental and disposal of the same, shall not be subject to the provisions and limitations of this article.

§ 165. The legislative assembly shall pass suitable laws for the safe keeping, transfer and disbursement of the state school funds; and shall require all officers charged with the same or the safe keeping thereof to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan with or without interest or shall deposit in his own name, or otherwise than in the name of the State of North Dakota or shall deposit in any banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid, or purposely allow any portion of the same to remain in his own hands uninvested, except in the manner prescribed by law, every such act shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken or loaned, or deposited, or exchanged, or withheld, and shall be a felony; and any failure to pay over, produce or account for, the state school funds or any part of the same entrusted to any such officer, as by law required or demanded, shall be held and be taken to be prima facie evidence of such embezzlement.

ARTICLE 10.—COUNTY AND TOWNSHIP ORGANIZATION.

§ 166. The several counties in the Territory of Dakota lying north of the seventh standard parallel, as they now exist, are hereby declared to be counties of the State of North Dakota.

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§ 167. The legislative assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

§ 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties to be affected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

§ 169. The legislative assembly shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

§ 170. The legislative assembly shall provide by general law for township organization under which any county may organize, whenever a majority of all the legal voters of such county, voting at a general election shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election; and the affairs of said county may be transacted by the chairmen of the several township boards of said county, and such others as may be provided by law for incorporated cities, towns or villages, within such county.

§ 171. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such a manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county and the affairs of said county shall then be transacted by a board of county commissioners as is now provided by the laws of the Territory of Dakota.

§ 172. Until the system of county government by the chairmen of the several township boards is adopted by any county the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members whose terms of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business, as shall be provided by law.

§ 173. At the first general election held after the adoption of this constitution, and every two years thereafter, there shall be elected in each organized county in the state, a county judge, clerk of court, register of deeds, county auditor, treasurer, sheriff and state's attorney, who shall be electors of the county in which they are elected, and who shall hold their office until their successors are elected and qualified. The legislative assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

ARTICLE 11.—REVENUE AND TAXATION.

§ 174. The legislative assembly shall provide for raising revenue sufficient to

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defray the expenses of the state for each year, not to exceed in any one year four (4) mills on the 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 also a sufficient sum to pay the interest on the state debt.

§ 175. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

§ 176. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation; and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; but the legislative assembly may, by law, provide for the payment of a per centum of gross earnings of railroad companies to be paid in lieu of all state, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said corporations shall be exempted from taxation in the same manner, and on the same basis as other real estate is taxed, except roadbed, right-of-way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article relating to assessment of railroad property shall cease to be in force.

§ 177. All improvements on land shall be assessed in accordance with section 179, but plowing shall not be considered as an improvement or add to the value of land for the purpose of assessment.

§ 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party.

§ 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state shall be assessed by the state board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts.

§ 180. The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

§ 181. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE 12.—PUBLIC DEBT AND PUBLIC WORKS.

§ 182. The state may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota at the time of the adoption of this constitution. Every such debt shall be authorized by law for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax to the payment of said principal and interest, and such

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appropriation shall not be repealed nor the tax discontinued until such debt, both principal and interest, shall have been fully paid. No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense in case of threatened hostilities; but the issuing of new bonds to refund existing indebtedness, shall not be construed to be any part or portion of said two hundred thousand dollars.

§ 183. The debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five (5) per centum upon the assessed value of the taxable property therein; provided, that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such assessed value beyond said five per cent limit. In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount of existing indebtedness, whether contracted prior or subsequent to the adoption of this constitution shall be included; provided, further, that any incorporated city may become indebted in any amount not exceeding four per centum on such assessed value without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district, or any other political subdivision shall be void.

§ 184. Any city, county, township, town, school district, or any other political 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.

§ 185. Neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

§ 186. No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts or demands against the state, or any county or other political subdivision, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer or officers, whose duty it may be to audit the same.

§ 187. No bond or evidence of indebtedness of the state shall be valid unless the same shall have endorsed thereon a certificate, signed by the auditor and secretary of state, showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision shall be valid unless the same have endorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond, or evidence of debt, is issued pursuant to law and is within the debt limit.

ARTICLE 13. — MILITIA.

§ 188. The militia of this state shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms

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shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

§ 189. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

§ 190. The legislative assembly shall provide by law for the establishment of volunteer organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this state except the army of the United States, without the proclamation of the governor of the state.

§ 191. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

§ 192. The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law.

§ 193. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.

ARTICLE 14. — IMPEACHMENT AND REMOVAL FROM OFFICE.

§ 194. 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.

§ 195. 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 the 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.

§ 196. The governor and other state and judicial officers, except county judges justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than 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.

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

§ 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

§ 200. 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.

§ 201. No person shall be liable to impeachment twice for the same offense.

ARTICLE 15. — FUTURE AMENDMENTS.

§ 202. Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so

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next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

ARTICLE 16. — COMPACT WITH THE UNITED STATES.

§ 203. The following article shall be irrevocable without the consent of the United States and the people of this state:

1. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

2. The people inhabiting this state 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 that 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 this 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 this state on lands or property therein, belonging to, or which may hereafter be purchased by the United States, or reserved for its use. But nothing in this article shall preclude this state 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 acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the act of congress granting the same.

3. In order that payment of the debts and liabilities contracted or incurred by and on 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 February 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:

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.

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

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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.

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 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capital building fund."

The 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, 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 \$266,000; also, bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is \$96,700; also, bonds issued on account of the penitentiary at Bismarek, North Dakota, the face aggregate of which is \$93,600; also, refunding capital building warrants dated April 1, 1889, \$83,507.46.

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 \$210,000; also, bonds issued on account of the school for deaf mutes, at Sioux Falls, South Dakota, the face aggregate of which is \$51,000; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is \$75,000; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is \$94,300; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is \$97,500; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is \$49,400; also, bonds issued on account of the school of mines at Rapid City, South Dakota, the face aggregate of which is \$33,000; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is \$30,000; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is \$25,000; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is \$45,000.

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 or hereafter incurred, on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

The State of South Dakota shall pay to the State of North Dakota \$46,500, 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 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 here-

after 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 institutions, grounds or buildings of the territory situated or located within the boundaries of the other state.

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 9, 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 8th 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 sums 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 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 the public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there shall 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 it. And the State of North 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 North Dakota as its own debt or liability.

§ 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, 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 in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

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§ 205. The State of North Dakota hereby accepts the several grants of land granted by the United States to the State of North Dakota by an act of congress, 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 equal footing with the original states, and to make donations of public lands to such states," under the conditions and limitations therein mentioned; reserving the right, however, to apply to congress for modification of said conditions and limitations in case of necessity.

ARTICLE 17.—MISCELLANEOUS.

§ 206. The name of this state shall be "North Dakota." The State of North Dakota shall consist of all the territory included within the following boundary, to-wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the State of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

§ 207. The following described seal is hereby declared to be and hereby constituted the Great Seal of the State of North Dakota, to-wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto "Liberty and Union Now and Forever, One and Inseparable;" the words "Great Seal" at the top, the words "State of North Dakota" at the bottom; "October 1st" on the left and "1889" on the right. The seal to be two and one-half inches in diameter.

§ 208. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting from forced sale to all heads of families a homestead, the value of which shall be limited and defined by law, and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

§ 209. The labor of children under twelve years of age shall be prohibited in mines, factories and workshops in this state.

§ 210. All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

§ 211. Members of the legislative assembly and judicial department, except such inferior officers as may be by law exempted shall, before they enter on 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 North Dakota; and that I will faithfully discharge the duties of the office of..... according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury), if an affirmation, and no other oath, declaration, or test shall be required as a qualification for any office or public trust.

§ 212. The exchange of "black lists" between corporations shall be prohibited.

§ 213. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any

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manner rightfully entitled, shall be her separate property and shall not be liable for the debts of her husband.

ARTICLE 18. — CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

§ 214. Until otherwise provided by law, the member of the house of representatives of the United States apportioned to this state, shall be elected at large.

Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and the representatives shall be apportioned as follows:

The first district shall consist of the townships of Walhalla, St. Joseph, Neche, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton, in the county of Pembina, and be entitled to one senator and two representatives.

The second district shall consist of the townships of St. Thomas, Hamilton, Cavalier, Akra, Beaulieu, Thingvalla, Gardar, Park, Crystal, Elora and Lodema, in the county of Pembina, and be entitled to one senator and two representatives.

The third district shall consist of the townships of Perth, Latonia, Adams, Silvestar, Cleveland, Morton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River and Glenwood, in the county of Walsh, and be entitled to one senator and two representatives.

The fourth district shall consist of the townships of Forest River, Walsh Center, Grafton, Farmington, Ardock, village of Ardock, Harrison, city of Grafton, Oakwood, Martin, Walshville, Pulaski, Acton, Minto and St. Andrews, in the county of Walsh, and be entitled to one senator and three representatives.

The fifth district shall consist of the townships of Gilby, Johnstown, Strabane, Wheatfield, Hegton, Arvilla, Avon, Northwood, Lind, Grace, Larimore, and the city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta, in the county of Grand Forks, and be entitled to one senator and two representatives.

The sixth district shall consist of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconer, Harvey, Turtle River, Ferry, Rye, Blooming, Meckinock, Lakeville and Levant, in the county of Grand Forks, and be entitled to one senator and two representatives.

The seventh district shall consist of the first and second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentru, Americus, Michigan, Union and Washington, in the county of Grand Forks, and be entitled to one senator and two representatives.

The eighth district shall consist of the county of Traill and be entitled to one senator and four representatives.

The ninth district shall consist of the township of Fargo and the city of Fargo, in the county of Cass, and the fractional township number 139 in range 48, and be entitled to one senator and two representatives.

The tenth district shall consist of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, Warren, Norman, Elm River, Harmony, Durbin, Addison, Davenport, Casselton and the city of Casselton, in the county of Cass, and be entitled to one senator and three representatives.

The eleventh district shall consist of the townships of Webster, Rush River, Hunter, Arthur, Amenias, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walberg, Watson, Page, Rich, Ayr, Buffalo, Howes, Eldrid, Highland, Rochester, Lake, Cornell, Tower, Hill, Clifton and Pontiac, in the county of Cass, and be entitled to one senator and three representatives.

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The twelfth district shall consist of the county of Richland and be entitled to one senator and three representatives.

The thirteenth district shall consist of the county of Sargent and be entitled to one senator and two representatives.

The fourteenth district shall consist of the county of Ransom and be entitled to one senator and two representatives.

The fifteenth district shall consist of the county of Barnes and be entitled to one senator and two representatives.

The sixteenth district shall consist of the counties of Steele and Griggs and be entitled to one senator and two representatives.

The seventeenth district shall consist of the county of Nelson and be entitled to one senator and one representative.

The eighteenth district shall consist of the county of Cavalier and be entitled to one senator and two representatives.

The nineteenth district shall consist of the counties of Towner and Rolette, and be entitled to one senator and one representative.

The twentieth district shall consist of the counties of Benson and Pierce, and be entitled to one senator and two representatives.

The twenty-first district shall consist of the county of Ramsey, and be entitled to one senator and two representatives.

The twenty-second district shall consist of the counties of Eddy, Foster and Wells, and be entitled to one senator and two representatives.

The twenty-third district shall consist of the county of Stutsman, and be entitled to one senator and two representatives.

The twenty-fourth district shall consist of the county of LaMoure, and be entitled to one senator and one representative.

The twenty-fifth district shall consist of the county of Dickey, and be entitled to one senator and two representatives.

The twenty-sixth district shall consist of the counties of Emmons, McIntosh, Logan and Kidder, and be entitled to one senator and two representatives.

The twenty-seventh district shall consist of the county of Burleigh and be entitled to one senator and two representatives.

The twenty-eighth district shall consist of the counties of Bottineau and McHenry, and be entitled to one senator and one representative.

The twenty-ninth district shall consist of the counties of Ward, McLean, and all the unorganized counties lying north of the Missouri river, and be entitled to one senator and one representative.

The thirtieth district shall consist of the counties of Morton and Oliver, and be entitled to one senator and two representatives.

The thirty-first district shall consist of the counties of Mercer, Stark and Billings, and all the unorganized counties lying south of the Missouri river, and be entitled to one senator and one representative.

ARTICLE 19. — PUBLIC INSTITUTIONS.

§ 215. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the act of congress, approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe, subject to the limitations provided in the article on school and public lands contained in this constitution:

First. The seat of government at the city of Bismarck, in the county of Burleigh.

Second. The State University and the School of Mines at the city of Grand Forks, in the county of Grand Forks.

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Third. The Agricultural College at the city of Fargo, in the county of Cass.

Fourth. A State Normal School at the city of Valley City, in the county of Barnes; and the legislative assembly in apportioning the grant of eighty thousand acres of land for normal schools made in the act of congress referred to shall grant to the said normal school at Valley City as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

Fifth. The Deaf and Dumb Asylum at the city of Devils Lake, in the county of Ramsey.

Sixth. A State Reform School at the city of Mandan, in the county of Morton.

Seventh. A State Normal School at the city of Mayville, in the county of Traill; and the legislative assembly in apportioning the grant of lands made by congress, in the act aforesaid for state normal schools, shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

Eighth. A State Hospital for the Insane and Institution for the Feeble Minded in connection therewith, at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for "other educational and charitable institutions" to the benefit and for the endowment of said institution.

§ 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions," as is allotted by law, viz:

First. A Soldiers' Home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second. A Blind Asylum, or such other institution as the legislative assembly may determine, at such place in the county of Pembina as the qualified electors of said county may determine at an election to be held as prescribed by the legislative assembly, with a grant of thirty thousand acres.

Third. An Industrial School and School for Manual Training, or such other educational or charitable institution as the legislative assembly may provide, at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Fourth. A School of Forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

Fifth. A Scientific School, or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres; provided, that no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this constitution.

ARTICLE 20.—PROHIBITION.

§ 217. No person, association or corporation shall within this state, manufacture for sale or gift, any intoxicating liquors, and no person, association or corporation shall import any of the same for sale or gift, or keep or sell or offer the same for sale, or gift, barter or trade as a beverage. The legislative assembly shall by law prescribe regulations for the enforcement of the provisions of this article and shall thereby provide suitable penalties for the violation thereof.

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SCHEDULE.

§ 1. That no inconvenience may arise from a change of territorial government to state government, it is declared that all writs, actions, prosecutions, claims and rights of individuals and bodies corporate shall continue as if no change of government had taken place, and all processes which may, before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Dakota shall be as valid as if issued in the name of the state.

§ 2. All laws now in force in the Territory of Dakota, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations or be altered or repealed.

§ 3. All fines, penalties, forfeitures and escheats accruing to the Territory of Dakota shall accrue to the use of the states of North Dakota and South Dakota and may be sued for and recovered by either of said states as necessity may require.

§ 4. 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; all bonds, obligations or other undertakings executed to this territory, or to any officer in his official capacity, shall pass over to the proper state authority, and to their successors in office, for the use therein respectively expressed, and may be sued for and recovered accordingly; all criminal prosecutions and penal actions which have arisen, or may arise before the organization of the judicial department, under this constitution, or which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

§ 5. All property, real and personal, and credits, claims and choses in action belonging to the Territory of Dakota at the time of the adoption of this constitution, shall be vested in and become the property of the states of North Dakota and South Dakota.

§ 6. Whenever any two of the judges of the supreme court of the state, elected under the provisions of this constitution shall have qualified in their offices, the causes then pending in the supreme court of the territory on appeal or writ of error from the district courts of any county or subdivision within the limits of this state, and the papers, records and proceedings of said court shall pass into the jurisdiction and possession of the supreme court of the state, except as otherwise provided in the enabling act of congress, and until so superseded the supreme court of the territory and the judges thereof shall continue, with like powers and jurisdiction as if this constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this constitution shall have qualified in his office, the several causes then pending in the district court of the territory within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the state for such county, except as provided in the enabling act of congress, and until the district courts of this territory shall be superseded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the territory.

§ 7. Until otherwise provided by law, the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts respectively of the state.

§ 8. Whenever this constitution shall go into effect, the books, records and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the

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jurisdiction and possession of the county court of the same county, and the said county court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. And until the election and qualification of the judges of the county courts provided for in this constitution, the probate judges shall act as the judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein, until the said court shall have procured a proper seal.

§ 9. The terms "probate court" or "probate judge," whenever occurring in the statutes of the territory, shall, after this constitution goes into effect, be held to apply to the county court or county judge.

§ 10. All territorial, county and precinct officers, who may be in office at the time this constitution takes effect, whether holding their offices under the authority of the United States or of the territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this constitution, until their successors shall be elected and qualified in accordance with the provisions of this constitution, and official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted; and such officers for their term of service, under this constitution, shall receive the same salaries and compensation as is by this constitution, or by the laws of the territory, provided for like officers; provided, that the county and precinct officers shall hold their offices for the term for which they were elected. There shall be elected in each organized county in this state, at the election to be held for the ratification of this constitution, a clerk of the district court, who shall hold his office under said election until his successor is duly elected and qualified. The judges of the district court shall have power to appoint state's attorneys in any organized counties where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until his successor is elected and qualified.

§ 11. This constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

§ 12. Immediately upon the adjournment of this convention the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of the constitutional convention shall issue a proclamation, which shall be published and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people on the first Tuesday in October, 1889, of all the state and district officers created and made elective by this constitution. This constitution shall be submitted for adoption or rejection at said election to a vote of the electors qualified by the laws of this territory to vote at all elections. At the election provided for herein the qualified voters shall vote directly for or against this constitution and for or against the article separately submitted.

§ 13. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given for the period of twenty days in the manner provided by law. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns for all state and district officers, and members of the legislative assembly, shall be made to the canvassing board hereinafter provided for.

§ 14. The governor, secretary and chief justice, or a majority of them, shall constitute a board of canvassers to canvass the vote of such election for all state and district officers and members of the legislative assembly. The said board shall assemble at the seat of government of the territory on the fifteenth day after the day of such election (or on the following day if such day falls on Sunday),

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and proceed to canvass the votes on the adoption of this constitution and for all state and district officers and members of the legislative assembly in the manner provided by the laws of the territory for canvassing the vote for delegate to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the territory an abstract certified by them, of the number of votes cast for or against the adoption of the constitution, and for each person for each of said offices, and of the total number of votes cast in each county.

§ 15. All officers elected at such election shall, within sixty days after the date of the executive proclamation admitting the State of North Dakota into the union, take the oath required by this constitution, and give the same bond required by the law of the territory to be given in case of like officers of the territory and districts, and shall thereupon enter upon the duties of their respective offices; but the legislative assembly may require by law all such officers to give other or further bonds as a condition of their continuance in office.

§ 16. The judges of the district court who shall be elected at the election herein provided for shall hold their offices until the first Monday in January, 1893, and until their successors are elected and qualified. All other state officers, except judges of the supreme court, who shall be elected at the election herein provided for, shall hold their offices until the first Monday in January, 1891, and until their successors are elected and qualified. Until otherwise provided by law the judges of the supreme court shall receive for their services the salary of four thousand dollars per annum, payable quarterly; and the district judges shall receive for their services the salary of three thousand dollars per annum, payable quarterly.

§ 17. The governor-elect of the state immediately upon his qualifying and entering upon the duties of his office shall issue his proclamation convening the legislative assembly of the state at the seat of government, on a day to be named in said proclamation, and which shall not be less than fifteen nor more than forty days after the date of such proclamation. And said legislative assembly after organizing shall proceed to elect two senators of the United States for the State of North Dakota; and at said election the two persons who shall receive a majority of all the votes cast by the said senators and representatives shall be elected such United States senators. And the presiding officers of the senate and house of representatives shall each certify the election to the governor and secretary of the State of North Dakota; and the governor and secretary of state shall certify the election of such senators as provided by law.

§ 18. At the election herein provided for there shall be elected a representative to the fifty-first congress of the United States by the electors of the state at large.

§ 19. It is hereby made the duty of the legislative assembly at its first session to provide for the payment of all debts and indebtedness authorized to be incurred by the constitutional convention of North Dakota, which shall remain unpaid after the appropriation made by congress for the same shall have been exhausted.

§ 20. There shall be submitted at the same election at which this constitution is submitted for rejection or adoption, Article 20, entitled "Prohibition," and persons who desire to vote for said article shall have written or printed on their ballots "For Prohibition," and all persons desiring to vote against said article shall have written or printed on their ballots "Against Prohibition." If it shall appear according to the returns herein provided for that a majority of all the votes cast at said election for and against prohibition are for prohibition, then said Article 20 shall be and form a part of this constitution and be in full force and effect as such from the date of the admission of this state into the union. But if a majority of said votes shall appear according to said returns to be against

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prohibition, then said Article 20 shall be null and void and shall not be a part of this constitution.

§ 21. The agreement made by the joint commission of the constitutional conventions of North Dakota 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 which records and archives are a 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 which are a 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 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 24 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 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 said states of North Dakota and South Dakota, that is to say:

Appropriation Ledger for years ending November 1889-90—one volume.

The Auditor's Current Warrant 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 originals 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 capitol 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

CONSTITUTION OF NORTH DAKOTA.

provide copies or abstracts of 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 it 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.

§ 22. Should the counties containing lands which form a part of the grant of lands made by congress to the Northern Pacific Railroad company be compelled by law to refund moneys paid for such lands or any of them by purchasers thereof at tax sales thereof, based upon taxes illegally levied upon said lands, then and in that case the State of North Dakota shall appropriate the sum of twenty-five thousand dollars (\$25,000) or so much thereof as may be necessary to reimburse said counties for the amount so received from said illegal tax sales and paid by said counties into the treasury of Dakota Territory.

§ 23. This constitution shall, after its enrollment, be signed by the president of this convention and the chief clerk thereof, and such delegates as desire to sign the same, whereupon it shall be deposited in the office of the secretary of the territory, where it may be signed at any time by any delegate who shall be prevented from signing the same for any reason at the time of the adjournment of this convention.

§ 24. In case the territorial officers of the Territory of Dakota, or any of them who are now required by law to report to the governor of the territory, annually or biennially, shall prepare and publish such reports covering the transactions of their offices up to the time of the admission of the State of North Dakota into the union; the legislative assembly shall make sufficient appropriations to pay one-half of the cost of such publication.

§ 25. The governor and secretary of the territory are hereby authorized to make arrangements for the meeting of the first legislative assembly, and the inauguration of the state government.

§ 26. The legislative assembly shall provide for the editing, and for the publication, in an independent volume, of this constitution, as soon as it shall take effect, and whenever it shall be altered or amended, and shall cause to be published in the same volume the Declaration of Independence, the Constitution of the United States and the Enabling Act.

Done at Bismarck, Dakota, in open convention, this 17th day of August, A. D. 1889.

F. B. FANCHER, President.

JOHN G. HAMILTON, Chief Clerk.

AMENDMENT TO THE CONSTITUTION OF NORTH DAKOTA.

[Ratified by popular vote Nov. 6, 1894.]

ARTICLE 1.

The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

PROCLAMATION

ADMITTING THE STATE OF NORTH DAKOTA INTO THE UNION.

[Issued by President Harrison Nov. 2, 1889.]

WHEREAS, The congress of the United States did, by an act approved on the twenty-second day of February, one thousand eight hundred and eighty-nine provide that the inhabitants of the Territory of Dakota might, upon the conditions prescribed by said act, become the states of North Dakota and South Dakota; and

WHEREAS, It was provided by said act that the area comprising the Territory of Dakota should, for the purposes of the act be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory and that the delegates elected as therein provided to the constitutional convention in districts north of said parallel should assemble in convention at the time prescribed in the act at the city of Bismarck; and

WHEREAS, It was provided by the said act that the delegates elected, as aforesaid, should, after they had met and organized, declare on behalf of the people of North Dakota that they adopt the constitution of the United States; whereupon the said convention should be authorized to form a constitution and state government for the proposed state of North Dakota; and

WHEREAS, It was provided by said act that the constitution so adopted should 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 be repugnant to the constitution of the United States and the principles of the declaration of independence; and that the constitution should, by an ordinance irrevocable without the consent of the United States and the people of said states, make certain provisions prescribed in said act; and

WHEREAS, It was provided by said act that the constitutions of North Dakota and South Dakota should respectively incorporate an agreement, to be reached in accordance with the provision of the act for an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also for the apportionment of the debts and liabilities of said territory, and that each of said states should obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively; and

WHEREAS, It was provided by said act that the constitution thus formed for the people of North Dakota should, by an ordinance of the convention forming the same, be submitted to the people of North Dakota, at an election to be held therein on the first Tuesday in October, one thousand eight hundred and eighty-nine, for ratification or rejection by the qualified voters of said proposed state, and that the returns of said election should be made to the secretary of the Territory of Dakota, who with the governor and chief justice thereof, or any two of them, should canvass the same, and if a majority of the legal votes cast should be for the constitution, the governor should certify the result to the president of the

PROCLAMATION ADMITTING NORTH DAKOTA.

United States, together with a statement of the votes cast thereon, and upon separate articles or propositions and a copy of said constitution, articles, propositions and ordinances; and

WHEREAS, It has been certified to me by the governor of the Territory of Dakota, that within the time prescribed by said act of congress a constitution for the proposed State of North Dakota has been adopted and the same ratified by a majority of the qualified voters of said proposed state in accordance with the conditions prescribed in said act; and

WHEREAS, It is also certified to me by said governor that at the same time that the body of said constitution was submitted to a vote of the people, a separate article numbered 20 and entitled "prohibition" was also submitted and received a majority of all the votes cast for and against said article as well as a majority of all the votes cast for and against the constitution and was adopted; and

WHEREAS, A duly authenticated copy of said constitution, article, ordinances and propositions, as required by said act has been received by me;

Now, therefore, I, Benjamin Harrison, president of the United States of America, do, in accordance with the provisions of the act of congress aforesaid, declare and proclaim the fact that the conditions imposed by congress on the State of North Dakota to entitle that state to admission to the union, have been ratified and accepted and that the admission of the said state into the union is now complete.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the city of Washington, this second day of November, in the year of our Lord one thousand eight hundred and eighty-nine and of the Independence of the United States of America the one hundred and fourteenth.

BENJ. HARRISON.

By the President:

JAMES G. BLAINE,
Secretary of State.

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POLITICAL CODE.

§ 1. **Title.** This act shall be known as the political code of the state of North Dakota, and is divided into chapters as follows:

CHAPTER 1.

THE SOVEREIGNTY OF THE STATE AND THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

§ 2. **Territorial jurisdiction, limitations on.** The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

§ 3. **Legislative consent to purchase of lands by United States. Jurisdiction over.** The legislative assembly consents to the purchase or condemnation by the United States of any tract within this state for the purpose of erecting forts, magazines, arsenals, dock yards and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime may be served and executed thereon in the same manner and by the same officers, as if the purchase or condemnation had not been made.

§ 4. **Jurisdiction ceded.** Jurisdiction is hereby ceded to the United States over any tract of land that may hereafter be acquired by the United States on which to establish a military post; provided, that legal process, civil and criminal, of this state shall extend over such land acquired by the United States to establish a military post, in all cases in which exclusive jurisdiction is not vested in the United States, and in all cases of crimes not committed within the limits of such reservation. § 1, c. 81, 1895.

§ 5. **Rights over persons enumerated.** The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime;
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;
3. To imprison or confine for the purpose of enforcing civil remedies;

4. To establish custody and restraint for the persons of idiots, lunatics, drunkards and other persons of unsound mind;

5. To establish custody and restraint of paupers for the purposes of their maintenance;

6. To establish custody and restraint of minors unprovided for by natural guardians for the purposes of their education, reformation and maintenance;

7. To require services of persons, with or without compensation, in military duty, in jury duty, as witnesses, as township or village officers, in highway labor, in maintaining the public peace in enforcing the service of process, in protecting life and property from fire, pestilence, wreck or flood, and in such other cases as are provided by law.

§ 6. Original and ultimate title. The original and ultimate right to all property, real or personal, within the limits of this state is in the state.

§ 7. Property escheats when. All property, real and personal, within the limits of this state, which does not belong to any person or to the United States, belongs to the state. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state.

§ 8. Acquisition by taxation and assessment. The state may acquire property by taxation in the modes authorized by law.

§ 9. By right of eminent domain. It may acquire or authorize others to acquire title to property, real or personal, for public use in the cases and in the mode provided by law.

§ 10. Who are the people. The people, as a political body, consist:

1. Of citizens who are electors;
2. Of citizens not electors.

§ 11. Who are citizens. The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens and of alien public ministers and consuls;
2. All persons born out of this state and who are citizens of the United States and residing within this state.

§ 12. Residence, rules for determining. Every person has in law a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian;
7. The residence can be changed only by the union of act and intent.

§ 13. All persons within the state subject to its jurisdiction. Every person while within this state is subject to its jurisdiction and entitled to its protection.

§ 14. **Allegiance.** Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

§ 15. **Allegiance, may be renounced.** Allegiance may be renounced by a change of residence.

§ 16. **Persons not citizens.** Persons in this state not its citizens, are either:

1. Citizens of other states; or,
2. Aliens.

§ 17. **Eligibility to office.** Every elector is eligible to the office for which he is an elector, except when otherwise specially provided; and no person is eligible who is not such an elector.

§ 18. **Rights and duties of citizens not electors.** An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

§ 19. **Rights and duties of citizens of other states.** A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

CHAPTER 2.

THE LEGISLATIVE ASSEMBLY.

ARTICLE 1.—MEETING AND ORGANIZATION OF THE LEGISLATIVE ASSEMBLY.

§ 20. **Legislative assembly meets, when.** The legislative assembly shall meet at the seat of government at twelve o'clock noon on the first Tuesday after the first Monday in January in the year next following the election of the members thereof. § 53, Const.

§ 21. **Secretary of senate and chief clerk of house to make roll of members.** It shall be the duty of the secretary of the senate and the chief clerk of the house, at the opening of each 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 such secretary and chief clerk, and the same shall be prima facie evidence of the right to membership of the person certified therein to be elected for all purposes of the organization of either branch of the legislative assembly. § 14, c. 2, Pol. C. am'd.

§ 22. **Legislative sessions called to order by secretary and chief clerk.** In all cases the secretary of the senate and chief clerk of the house serving at the close of a session shall remain in office until the organization of the next regular session of the legislative assembly, and at twelve o'clock noon on the day appointed by law for the meeting of the legislative assembly the said officers, 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 senate and house of representatives shall expire with the close of the session at which they were elected, except the secretary of the senate and the chief clerk of the house for the purposes herein designated. § 15, c. 2, Pol. C. am'd.

§ 4, c. 2, Pol. C.
am'd.
§ 48, Const.

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

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

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

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

4. Giving or offering a bribe to a member, or 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 continue beyond thirty days, nor extend beyond the same session of the legislative assembly.

§ 5, c. 2, Pol. C.

§ 24. 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 by both, at the discretion of the court.

§ 6, c. 2, Pol. C.
am'd.

§ 25. Administering oath to members and officers of the legislative assembly. The speaker of the house and the president of the senate, the governor, or any of the judges of the supreme or district courts are authorized to administer the oath of office to the members and officers of the respective houses.

§ 8, c. 2, Pol. C.

§ 26. Chairman of committee may administer oath, when. Any member of the senate or house of representatives, while acting as chairman of 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.

§ 9, c. 2, Pol. C.

§ 27. Contested seats. Each house sole judge of member's qualifications. 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 sole judge of the qualifications of its members.

ARTICLE 2.—LEGISLATIVE OFFICERS AND EMPLOYEES.

§ 1, c. 76, 1895.
§§ 1.2, c. 97, 1893.

§ 28. Officers and employees. Compensation. The following shall be the officers and employees of the senate and house of representatives of the legislative assembly with the compensation as herein provided for:

For the senate:

A president pro tempore, whose compensation shall be two dollars per day.

One secretary, whose compensation shall be six dollars per day.

One assistant secretary, whose compensation shall be five dollars per day.

One enrolling and engrossing clerk, whose compensation shall be five dollars per day.

One bill clerk, whose compensation shall be five dollars per day.

One stenographer, whose compensation shall be five dollars per day.

One sergeant-at-arms, whose compensation shall be four dollars per day.

One door-keeper, whose compensation shall be three dollars per day, and who shall be an assistant to the sergeant-at-arms.

One messenger, whose compensation shall be three dollars per day.

One postmaster, whose compensation shall be four dollars per day.

One chaplain, whose compensation shall be two dollars per day.

Two pages, whose compensation shall be two dollars per day each.

One janitor, whose compensation shall be three dollars per day.

One watchman, whose compensation shall be three dollars per day.

One clerk of the judiciary committee whose compensation shall be five dollars per day.

One journal clerk, who shall be under the supervision of the secretary of the senate, and whose compensation shall be five dollars per day.

The journal of the senate shall be completed and indexed by the secretary of the senate within ten days after adjournment thereof, and for such completion and indexing he shall be allowed the sum of fifty dollars.

In addition to the above there shall be appointed by the president, when deemed necessary by the senate, such assistant enrolling and engrossing clerks as may be actually necessary, who shall receive a compensation of four dollars per day; provided, that during the first twenty-five days the number of such clerks shall not exceed six; during the second twenty-five days the total number shall not exceed ten, and during the last ten days the total number shall not exceed fifteen.

For the house of representatives:

A speaker, whose compensation shall be two dollars per day.

One chief clerk, whose compensation shall be six dollars per day.

One assistant clerk, whose compensation shall be five dollars per day.

One chief enrolling and engrossing clerk, whose compensation shall be five dollars per day.

One bill clerk, whose compensation shall be five dollars per day.

One stenographer, whose compensation shall be five dollars per day.

One sergeant-at-arms, whose compensation shall be four dollars per day.

One door-keeper, whose compensation shall be three dollars per day, and who shall be an assistant to the sergeant-at-arms.

One messenger, whose compensation shall be three dollars per day.

One postmaster, whose compensation shall be four dollars per day.

One chaplain, whose compensation shall be two dollars per day.

Four pages, whose compensation shall be two dollars per day each.

The janitors, whose compensation shall be three dollars per day.

One watchman, whose compensation shall be four dollars per day.

One clerk of the judiciary committee, whose compensation shall be five dollars per day.

One journal clerk, whose compensation shall be five dollars per day, and who shall be under the supervision of the chief clerk of the house.

The journal of the house shall be completed and indexed by the

chief clerk of the house within ten days after the adjournment thereof, and for such completion and indexing he shall be allowed the sum of fifty dollars. In addition to the above there shall be appointed by the speaker, when deemed necessary by the house, such assistant enrolling and engrossing clerks as are actually necessary, who shall receive four dollars per day; provided, that during the first twenty-five days of the session the number of such clerks shall not exceed six; during the second twenty-five days the total number shall not exceed ten, and during the last ten days the total number shall not exceed fifteen.

§ 11, c. 2, Pol. C. am'd. **§ 29. Officers elected viva voce. Oath.** The officers of each house shall be elected by viva voce vote of the members thereof, at such time after the meeting of such house as the members thereof shall deem proper, and they shall be required to take and subscribe the oath prescribed in section 211 of the constitution. Neither house shall transact any business other than the election or appointment of officers, until such officers are elected or appointed pro tem.

§§ 2, 4, 5, c. 86, 1890. **§ 30. Assistant legislative clerks and employees, how appointed.** The president of the senate and the speaker of the house of representatives are authorized to appoint from time to time such assistant enrolling and engrossing clerks and such committee clerks or other employees for their respective houses in addition to those hereinbefore provided for, as in the judgment of their respective bodies, may be deemed necessary for the transaction of their business; but the compensation of such subordinate clerks and employees so appointed shall not exceed the sum of four dollars per day.

§ 6, c. 86, 1890. **§ 31. Salaries, how audited and paid. Clerks may be discharged for incompetency.** The respective amounts due each clerk, officer or employee so employed and appointed shall be audited and paid out of the state treasury upon an account certified as correct by the presiding officer of the respective houses, duly attested by the secretary and chief clerk thereof, and when so audited and attested the state auditor is authorized and directed to draw his warrants therefor upon the state treasurer.

§ 6, c. 86, 1890. **§ 32. Discharge of officers, clerks and employees.** Whenever any officer, clerk or employee through neglect or incompetency shall fail properly to discharge the duties of his office or position, it shall be the duty of the respective body to declare the office or position vacant and to fill the vacancy so created.

§ 12, c. 2, Pol. C. am'd. **§ 33. Secretary of senate and chief clerk of house to keep journals, preserve and file documents.** It shall be the duty of the secretary of the senate 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 to deposit for safe keeping in the office of the secretary of state all books, bills, documents, resolutions and papers in the possession of the legislative assembly, correctly labeled, folded and classified, and generally to perform such duties as shall be assigned them by their respective houses; provided, that the journals need not be deposited as above provided until they are fully completed and indexed.

§ 13, c. 2, Pol. C. **§ 34. Secretary of senate and chief clerk of house to prepare and index journals.** It shall be the duty of the secretary of

the senate 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 the respective houses, and to affix an index thereto; and to transcribe into a book kept for that purpose the documents accompanying the messages of the governor, or by him sent to either house, other than those entered in 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 the compensation provided in section 28. The state auditor is hereby instructed to draw his warrants on the state treasurer in favor of each of said officers for such sum on proof being made that the record has been completed and the journals indexed as above required.

§ 35. Either house may remove its officers. It shall be competent at any time during a session of the legislative assembly for either house by a majority vote to remove from office any of the officers or employees provided for in this article; but in case of the removal of any officer by either house his place shall be filled by an election *viva voce*; and in all elections under the provisions of this article for officers of either house of the legislative assembly a majority of all votes cast shall be necessary to a choice. § 17, c. 2, Pol. C.

§ 36. Mileage and per diem of members, salaries of officers and employees. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, as a standing and continuing appropriation, such a sum as may be necessary to pay the mileage and per diem of members and the salaries of the officers and of the employees of the legislative assembly; and the state auditor is authorized to draw his warrants on the state treasurer for such sums as may from time to time become due to such members and employees. §§ 1, 2, c. 8, 1891.

ARTICLE 3. — SENATORIAL AND REPRESENTATIVE DISTRICTS AND LEGISLATIVE APPORTIONMENT.

§ 37. State legislative apportionment. The first district consists of the townships of Walhalla, St. Joseph, Necho, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton in the county of Pembina, and is entitled to one senator and two representatives. § 214, Const.
§ 1, c. 1, 1890.

The second district consists of the townships of St. Thomas, Hamilton, Cavalier, Akra, Beaulieu, Thingvalla, Gardar, Park, Crystal, Elora and Lodema in the county of Pembina, and is entitled to one senator and two representatives.

The third district consists of the townships of Perth, Latonia, Adams, Silvesta, Cleveland, Morton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River, Glenwood, and townships 155, 156, 157 and 158 of range 59 in the county of Walsh, and is entitled to one senator and two representatives.

The fourth district consists of the townships of Forest River, Walsh Center, Grafton, Farmington, Ardoch, Village of Ardoch, Harrison, city of Grafton, Oakwood, Martin, Walshville, Pulaski, Acton, Minto and St. Andrews in the county of Walsh, and is entitled to one senator and three representatives.

The fifth district consists of the townships of Gilby, Johnstown,

Strabane, Wheatfield, Hegton, Arvilla, Avon, Northwood, Lind, Grace, Larimore, and the city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta in the county of Grand Forks, and is entitled to one senator and two representatives.

The sixth district consists of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconor, Harvey, Turtle River, Ferry, Rye, Blooming, Meckinock, Lakeville and Levant in the county of Grand Forks, and is entitled to one senator and two representatives.

The seventh district consists of the first and second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentru, Americus, Michigan, Union and Washington in the county of Grand Forks, and is entitled to one senator and two representatives.

The eighth district consists of the county of Traill, and is entitled to one senator and four representatives.

The ninth district consists of the township of Fargo, and the city of Fargo in the county of Cass, and the fractional township number 139, in range 48, and is entitled to one senator and two representatives.

The tenth district consists of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, Warren, Norman, Elm River, Harmony, Durbin, Addison, Davenport, Casselton and the city of Casselton in the county of Cass, and is entitled to one senator and three representatives.

The eleventh district consists of the townships of Webster, Rush River, Hunter, Arthur, Amenia, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walburg, Watson, Page, Rich, Ayr, Buffalo, Howes, Eldred, Highland, Rochester, Lake, Cornell, Tower, Hill, Clifton and Pontiac in the county of Cass, and is entitled to one senator and three representatives.

The twelfth district consists of the county of Richland, and is entitled to one senator and three representatives.

The thirteenth district consists of the county of Sargent, and is entitled to one senator and two representatives.

The fourteenth district consists of the county of Ransom, and is entitled to one senator and two representatives.

The fifteenth district consists of the county of Barnes, and is entitled to one senator and two representatives.

The sixteenth district consists of the counties of Steele and Griggs, and is entitled to one senator and two representatives.

The seventeenth district consists of the county of Nelson, and is entitled to one senator and one representative.

The eighteenth district consists of the county of Cavalier, and is entitled to one senator and two representatives.

The nineteenth district consists of the counties of Towner and Rolette, and is entitled to one senator and one representative.

The twentieth district consists of the counties of Benson and Pierce, and is entitled to one senator and two representatives.

The twenty-first district consists of the county of Ramsey, and is entitled to one senator and two representatives.

The twenty-second district consists of the counties of Eddy, Foster and Wells, and is entitled to one senator and two representatives.

The twenty-third district consists of the county of Stutsman, and is entitled to one senator and two representatives.

The twenty-fourth district consists of the county of LaMoure, and is entitled to one senator and one representative.

The twenty-fifth district consists of the county of Dickey, and is entitled to one senator and two representatives.

The twenty-sixth district consists of the counties of Emmons, McIntosh, Logan and Kidder, and is entitled to one senator and two representatives.

The twenty-seventh district consists of the county of Burleigh, and is entitled to one senator and two representatives.

The twenty-eighth district consists of the counties of Bottineau and McHenry, and is entitled to one senator and one representative.

The twenty-ninth district consists of the counties of Ward, McLean and all the unorganized counties lying north of the Missouri river, and is entitled to one senator and one representative.

The thirtieth district consists of the counties of Morton and Oliver, and is entitled to one senator and two representatives.

The thirty-first district consists of the counties of Mercer, Stark and Billings and all the unorganized counties lying south of the Missouri river, and is entitled to one senator and one representative.

ARTICLE 4. — PRINTING AND DISTRIBUTION OF LAWS AND DOCUMENTS.

§ 38. Printing commission. The secretary of state, state treasurer and state auditor shall be ex officio commissioners of public printing during their terms of office respectively. § 1, c. 119, 1890.

§ 39. Classes of printing. The printing of the state is hereby divided into five classes, the first and second to be let in one contract, and the third, fourth and fifth classes in separate contracts as follows: § 2, c. 119, 1890.

1. The printing of bills, resolutions and other documents for the use of and incident to the legislative assembly shall constitute the first class.

2. The printing and binding of the journals of the senate and house of representatives shall constitute the second class.

3. The printing and binding of executive and public documents and reports shall constitute the third class.

4. The printing and binding of the volume of laws, with the joint resolutions, which shall be included in said volume, shall constitute the fourth class.

5. The printing of all blanks, circulars and other miscellaneous job work necessary for the use of the executive departments, other than such as are printed in pamphlet form and not entering into the volumes of executive documents, and all printing not included in the foregoing classes shall constitute the fifth class.

§ 40. Proposals for printing. The commissioners of public printing shall at least six months immediately preceding each regular session of the legislative assembly advertise for four weeks successively in two daily papers in the state, one of which shall be at the seat of government, inviting sealed proposals for doing all printing and binding required by the legislative assembly and by the several state departments for the two succeeding years commencing with the first day of January next following the date of the contract, and such bids shall specify at what per cent below the maximum rates sever-

ally prescribed in the next section the bidder will perform the work and furnish the stock.

§ 4, c. 119, 1890.

§ 41. Maximum prices for composition, press-work, binding and paper. The following prices are hereby established as the maximum prices for doing such work:

Composition: Sixty cents for each one thousand ems of plain composition; ninety cents for each one thousand ems of figure work; one dollar and twenty cents for each one thousand ems of rule and figure work.

Press-work: For the first one hundred impressions of form, one dollar; and twenty-five cents for each additional one hundred impressions or fraction thereof—one side of the sheet of flat cap, folio or medium, two pages on bill work, and eight pages of pamphlet or journal work, or fraction thereof, to constitute a form.

Folding and pasting on the first and fifth classes, for one fold, eight cents per hundred sheets; for two folds on one sheet, twelve cents per hundred sheets; for two folds and pasting and tipping, twenty-five cents per one hundred sheets, including trimming. On the second, third and fourth classes, when no charge is made for binding, ten cents per one hundred of eight pages or fraction thereof.

For stitching for all classes, including folding, collating, stabbing, stitching and trimming per one hundred copies, for eight pages or less, thirty-five cents per one hundred copies, and for each additional signature of eight pages, ten cents per one hundred copies.

For binding for all classes, including folding, collating, stabbing, stitching and pamphlet covering for books of eight pages or less, per one hundred copies, forty cents; for each additional signature of eight pages, ten cents per one hundred copies; if sewed instead of stitched, twelve cents per one hundred copies for each additional signature.

For binding: Book-work in tar board covered with paper, leather backs, lettered on back with ink, in addition to the pamphlet binding, thirty-five cents per volume.

For binding book-work in cloth, gilt lettering on back, in addition to pamphlet binding, thirty-five cents per volume.

For binding in full law sheep, and lettering, in addition to the pamphlet binding, seventy-five cents per volume.

The printing under the fifth class, which includes miscellaneous job work for the executive departments and other miscellaneous printing not covered by this article shall be under the control of the commissioners of printing, who shall secure the same at the lowest rates and upon the most advantageous terms.

For printing blank books, either ruled and printed or ruled without printing, the paper used to be sized and calendered, and of standard brands:

Cap paper, eighteen pounds to the ream, plain ruled, half-bound, one dollar and twenty-five cents per quire; ditto, printed heads, one dollar and seventy-five cents per quire; ditto, plain ruled extra full bound, two dollars per quire; ditto, printed heads, two dollars and fifty cents per quire.

Demy paper, twenty-eight pounds to the ream, plain ruled, half-bound, one dollar and fifty cents per quire; ditto, printed heads, two dollars per quire; ditto, plain ruled, extra full bound, two dollars and fifty cents per quire; ditto, printed heads, three dollars per quire.

Medium paper, thirty-six pounds to the ream, plain ruled, half-bound, two dollars per quire; ditto, printed heads, two dollars and

fifty cents per quire; ditto, plain ruled extra full bound, three dollars per quire; ditto, printed heads, three dollars and fifty cents per quire.

Medium paper, forty pounds to the ream, plain ruled, extra full bound, four dollars per quire; ditto, printed heads, four dollars and fifty cents per quire.

Super-royal paper, fifty-four pounds to the ream, plain ruled, extra full bound, four dollars and fifty cents per quire; ditto, printed heads, five dollars per quire.

§ 42. **Paper, quality, price.** All paper used for printing and binding of whatever nature shall be standard weights and grades and approved by the commissioners of printing. The maximum price of sized and calendered book paper shall be ten cents per pound; of linen ledger paper, twenty-five cents per pound; common flat paper, eighteen cents per pound; best bond paper twenty-five cents per pound. § 4, c. 119, 1890.

§ 43. **Proposals how made. Bond required.** Each proposal shall be in writing, sealed and addressed to the secretary of state, and shall be accompanied by a bond, executed in due form by the bidders; with at least two good and sufficient sureties, satisfactory to the commissioners, in the penal sum of four thousand dollars, conditioned for the faithful performance pursuant to this article of such class or classes of the state printing as may be awarded to him, and for the payment, as liquidated damages by such bidder to the state of any excess of cost over the bid of such bidder, which the state may be obliged to pay for such work by reason of the failure of such bidder to complete his contract. No bid unaccompanied by such bond shall be considered, and the right is reserved to the commissioners to reject any bid made by any other than regularly established and thoroughly competent printers, and shall also have the right to reject any or all bids if in their judgment the best interests of the state would be subverted thereby. § 5, c. 119, 1890.

§ 44. **Opening of bids. Awards.** The commissioners, or any two of them, shall within two days after the expiration of the term for receiving proposals as aforesaid, and not later than the first Tuesday after the first Monday in August proceed to open in public all such proposals received by them and to award the contract for each class of printing to the lowest bidder therefor, subject to the reservations of the preceding section; provided, that nothing herein contained shall be construed so as to prevent the same person from becoming contractor for two or more classes of printing, if he shall be the lowest bidder therefor. If two or more persons bid the same, and the lowest price for any class, or classes of printing, the commissioners shall award the contract to such one or more of them as in their opinion will best subserve the interests of the state. § 6, c. 119, 1890.

§ 45. **How bills to be printed.** Work of the first class shall be printed on first-class sized and calendered paper, from small pica type, with double the space between each line, the printed pages to be thirty-three ems pica wide and fifty-five ems pica long; one hundred and fifty copies of each bill shall be printed unless otherwise ordered by resolution of either house. § 7, c. 119, 1890.

§ 46. **How journals to be printed.** The journals of the legislative assembly shall be printed on first-class sized and calendered paper, of not less than forty pounds to the ream, size 25x38, from long primer type set solid (except that extracts, table-work, roll-calls, etc., may be set in brevier or smaller type); the printed pages to be twenty-five ems pica in width and forty-three ems pica in length. § 8, c. 119, 1890.

Double the contract price will be allowed upon the journals when printed daily for the use of the members, but nothing shall be charged for composition or correction, or re-imposition of the same matter for the bound journal, nor shall extra charge for composition be made when extra or additional copies are ordered printed.

§ 9, c. 119, 1890.

§ 47. Executive documents, how printed. The pamphlets and volumes of executive or public documents and reports shall be printed on first-class sized and calendered paper of not less than forty pounds to the ream, size 25x38, from long primer type, set solid; provided, that extracts and tabular work may be set in brevier or smaller type, the printed pages to be twenty-five ems pica in width and forty-three ems pica in length. The reports of the officers of the various departments, required to be made out for the use of the legislative assembly and for the information of the public, shall be printed and bound as elsewhere in this article provided, and the various reports, communications and other documents shall be reimposed and form the volumes of executive and public documents. There shall be no charge for the composition of matter used in the volumes of executive documents, or as separate pamphlets, or as parts of reports that are to be used, or had been previously used and paid for in the pamphlet form; provided, that the order for the same is given before the forms of type are distributed; but the maximum rate of one dollar for reimposition of each form of eight pages may be allowed. The volumes of the executive documents shall be paged consecutively, and the reports therein made up in as close and compact order as is consistent with good workmanship, without intervention of unnecessary blanks or separate title or half title pages, and at the conclusion of each volume there shall be an index referring to the particular page at which each separate document commences. The commissioners shall determine what reports and documents shall be printed in pamphlet form, and the number of copies of each report or document, when not specified by law. There shall be printed and bound three hundred copies of each volume of the executive documents.

§ 10, c. 119, 1890.

§ 48. Laws, how printed. The laws specified in the fourth class shall be printed in substantially the same form as to type, paper and form, as is prescribed for the printing of public documents in the preceding section.

§ 49. Expert, duties and compensation of. The commissioners of public printing may employ an expert, familiar with all classes of printing, the material used therein, measuring the work done and computing the price to be paid therefor, for such period of time each year as may be necessary for the performance of the duties devolving upon him, whose duty it shall be to confer and advise with such commissioners relative to advertising and letting contracts, to examine all work and supplies for the purpose of ascertaining whether the same conforms to the contract, to examine all accounts for public printing for the purpose of determining whether the charges contained in such accounts are correct, and to report the result of his examination to the commissioners and to perform such other duties as may be required of him by the commissioners. He shall receive the sum of six dollars per day for each day in which he is engaged in such employment, to be audited by the auditor upon the certificate of the commissioners and paid out of the state treasury as in other cases.

§ 11, c. 119, 1890.

§ 50. Printing, how done. All printing shall be done by established printing houses in this state, which shall have been doing

business in the state not less than one year, and all work shall be executed in a style consistent with good workmanship and with due reference to economy.

§ 51. Duty of commissioners in case of failure on contract. If from death or any unforeseen cause there shall be a failure on the part of any successful bidder to execute his contract, the commissioners, or a majority of them, may enter into a contract with the next lowest bidder. If any contractor after commencing upon his contract fails to execute the work embraced therein with reasonable expedition, and in a suitable manner, the commissioners may notify him for reasons they may specify that his contract is canceled, and they may then contract with some other person to do the work at the lowest practicable rate; provided, that the commissioners may give written notice to any contractor who is delaying the execution of the work in a manner they may deem unreasonable, that the same must be completed within a specified time, and for failure to complete the same within the time specified, that for every twenty-four hours delay thereafter the contractor shall suffer a penalty of one-quarter per cent to be deducted from the net amount of the printing so delayed. § 12, c. 119, 1890.

§ 52. Number of volumes to be printed and style of binding. Five hundred volumes of the laws required by this article to be printed shall be bound in full law sheep, and one thousand copies shall be half-bound. The volumes of executive documents provided for in section 47 of this article shall be bound in half binding. Two hundred copies of the biennial reports of the state auditor, state treasurer, commissioner of insurance and superintendent of public instruction shall be bound in cloth, the remainder authorized by law, to be bound in pamphlet form, unless otherwise ordered by the commissioners of printing. § 13, c. 119, 1890.

§ 53. Unnecessary delay, how extension granted. All contractors under the provisions of this article shall promptly and without unnecessary delay execute all orders issued to them by the legislative assembly, or either branch thereof, or by the commissioners of printing on behalf of the executive officers of the state; and the laws and volumes of public documents shall be delivered to the secretary of state within seventy days, and the journals of the two houses of the legislative assembly within sixty days after the index shall have been made out and delivered to the contractor; provided, that the commissioners may on good cause shown extend the time, not exceeding twenty days, for the execution of his contract. § 14, c. 119, 1890.

§ 54. Commissioners may reject inferior printing and work. The commissioners may reject any and all printing that is not done in a workmanlike manner, or with good material and with ordinary promptness; and may require contractors to present specimen pages of the type they propose to use, and may reject the same, in their discretion, and require new material, and their ruling and determination shall be final and conclusive on the contractor. Only good, clean and satisfactory work shall be accepted, and it must be done within a reasonable time. To accomplish this end the commissioners may withdraw the work from any contractor for unreasonable delay, or for neglect or refusal to use new material, if so required, or for neglect or refusal to furnish good, clean, or satisfactory work, and may, by their agent or otherwise, go into the open market and contract for and have the same done; and if by reason thereof the cost of having any such work done is greater than the original contract § 15, c. 119, 1890. am'd.

price, the excess shall be charged to and collected from the original contractor, or shall be made payable by and collected from the bondsmen of such original contractor; and the action of the commissioners in this matter shall be final and conclusive upon such contractor and his sureties.

§ 16, c. 119, 1890.

§ 55. Legislative journals, who keep and furnish copy. The secretary of the senate and the chief clerk of the house shall keep a journal of the proceedings of their respective houses, and furnish a copy immediately upon each daily adjournment to the contractor for printing the same, who shall print and deliver the same at the commencement of the next day's session for the use of the members of the legislative assembly—the number of copies of each daily journal to be determined by resolution of each branch of the legislative assembly. After being read in the house to which the journals respectively belong, and examined and compared with the minutes of the record or bill clerk or the clerk having charge of the record of bills, memorials and joint resolutions, and in the presence and with the sanction of the house, corrected as found and declared to be correct the proceedings of each day shall be attested by the secretary and chief clerk, and immediately thereafter delivered to the printer of the journals, who shall make the authorized corrections, if any, and print the sheets for the bound volumes of the journal. Each journal shall be recorded in books to be furnished by the secretary of state for that purpose. After the journals are recorded said books shall be deposited with the secretary of state, who shall carefully preserve the same, and such records shall be considered the true and authentic journal.

§ 17, c. 119, 1890.

§ 56. Copies of laws and journals to be furnished printer, by whom. The secretary of state shall furnish a true and accurate copy of the laws as they may be demanded by the printer thereof, and the secretary of the senate and the chief clerk of the house shall each furnish for the printer, who is bound by his contract to print the same, copies of the journal, bills, reports and other papers and documents without unnecessary delay and no contractor shall be accountable for any delay occasioned by the want of such copy.

§ 18, c. 119, 1890.

§ 57. Authentication of laws, memorials and resolutions All laws printed or published by authority of this state shall be printed or published without any certificates or additions to the same, except the word "approved" and the date of such approval, and in each volume of the session laws hereafter published there shall be a general certificate made by the secretary of state to the effect that all laws, memorials and resolutions contained therein have been compared by him with the originals thereof in his office, and that they are correct copies.

§ 19, c. 119, 1890.

§ 58. Governor's messages, how printed and number. All regular messages from the governor and all inaugural messages of the governor-elect shall be printed in pamphlet form and there shall be printed in such form for the governor's use five hundred copies, and for the use of the legislative assembly two thousand copies without any order by either house for the printing thereof.

§ 20, c. 119, 1890.

§ 59. Biennial and special reports, how printed. There shall be printed one thousand copies of the biennial reports of the state auditor, state treasurer and superintendent of public instruction and five hundred copies of the biennial reports of other state officers, and public boards required to make reports; and six hundred

copies of the biennial reports of the commissioner of insurance; also one thousand copies of the biennial reports of the commissioner of agriculture and labor; provided, that on request of the commissioner of agriculture and labor, such request to be approved by the governor, there shall be printed separately in pamphlet form such parts of the biennial report of said commissioner of agriculture and labor, or such special papers or articles in connection therewith, and such crop reports or other papers or pamphlets from time to time as such commissioner and the governor may jointly recommend for such separate publication; and the number of copies to be printed of each of said separate publications, crop reports or other papers or pamphlets shall be determined by the commissioner of agriculture and labor and the governor jointly.

§ 60. Journals and laws, number of printed. There shall be printed one hundred and fifty copies of each journal for the daily use of the legislative assembly, and three hundred copies of the bound edition which shall be in half binding; provided, that the legislative assembly may by concurrent resolution increase such number; one thousand five hundred copies of the general and special laws and joint resolutions shall be printed in one volume and bound in accordance with the provisions of this article. § 21, c. 119, 1890. am'd.

§ 61. Commissioners have charge of all printing paid for by the state. The commissioners shall have charge of all the printing and binding required to be done for the several departments of the government; receive the proper orders for the same, and have the same properly executed according to law; keep a record of all work ordered from the several contractors under the law, and of all printing and binding ordered by the legislative assembly; examine and supervise the work of printing in progress, and see it is executed with due economy to the state; make or authorize to be made the necessary indices for the volumes of the executive documents and reports; examine all accounts for printing and binding that may be presented, and adjust the same according to the terms of the contracts and in accordance with law and such rulings as may be determined by the commissioners. No printing required by any state officer as provided under this article shall be paid for unless the same shall have first been authorized by the legislative assembly or by the commissioners of printing. § 22, c. 119, 1890. am'd.

§ 62. Copies of documents to accompany bills for printing. Every contractor for public printing shall file and preserve one copy of each document or other matter printed by him for the state, which he shall deliver to the commissioners of printing at the same time the completed work is delivered together with a memorandum bill of the same. In the account submitted for the payment of the work the contractor shall at the same time submit his order for the work and state specifically the nature of the work performed, the number of copies, the number of ems of composition, the extra charge, if any, for rule or figure and rule and figure work; the number of impressions of press work, the cost of folding and binding and any other charges for which he claims payment; and if there is a charge for any alterations or changes from copy, the proofs of original composition and changes must be presented. § 23, c. 119, 1890.

§ 63. Printing accounts, how certified and paid. When the account of any contractor under this article shall have been adjusted, the commissioners shall certify the same to the state auditor, § 24, c. 119, 1890.

who on receipt thereof shall draw his warrant upon the state treasurer for the amount thereof; provided, that in the current execution of such contracts the commissioners are empowered, in their discretion, to deliver to such contractor a certificate for an amount not exceeding seventy-five per cent of completed work upon the contractor filing with the commissioners a statement of the amount of work done, for which amount the state auditor shall give his warrant upon the state treasurer to such contractor.

§ 25, c. 119, 1890.

§ 64. Distribution of journals and executive documents. Each member and officer of the legislative assembly, for himself, and each clerk of a court of record, and each county auditor, for the use of their offices respectively, is entitled to one copy of each journal, and the volumes of the executive documents. Each university, college, academy or other literary institution within the state is entitled to one copy of the general laws passed at each session of the legislative assembly and also to the volumes of executive documents.

§ 26, c. 119, 1890.
am'd.

§ 65. Who entitled to the laws. Penalty for refusing to turn over same by officers to successors. Each member and officer of the legislative assembly, for himself, shall have a copy of the laws; each judge and clerk of a court of record; each justice of the peace, each auditor or clerk in any city or incorporated village; each county auditor, treasurer, sheriff, register of deeds and state's attorney is entitled to receive one copy of the general laws passed at each session of the legislative assembly for his use while filling such offices, but every such officer, except members and officers of the legislative assembly, shall deliver the same to his successor in office for his use while filling such office; and if any person refuses on demand, to make such delivery, he shall forfeit and pay not less than five nor more than fifteen dollars to be recovered in a civil action brought by the successor in office of any such person in the name of the state for the use of the county where such action is brought before any justice of the peace in such county.

§ 27, c. 119, 1890.
am'd.

§ 66. Secretary of state to furnish laws, journals and documents to state officers, libraries, etc. The secretary of state shall deliver to the governor, state auditor, state treasurer, attorney general, adjutant general, railroad commissioners, commissioner of insurance, commissioner of agriculture and labor, clerk of the supreme court, supreme court reporter, superintendent of public instruction, the superintendent of every state benevolent society, each public institution, United States circuit judge, United States district judge, clerk of each of the United States courts, United States attorney for North Dakota and the United States marshal, each, one copy of the laws and of the journals and documents. He shall supply each state and each of the departments and territories of the United States and the general government of the United States with a copy. He shall furnish the state library with ten copies of the general and special laws, the journals and the volumes of executive documents.

§ 28, c. 119, 1890.

§ 67. Secretary of state to forward laws, journals and documents. The secretary of state shall as soon as the laws, journals and executive documents of each session are printed and ready for distribution box up the number of each to which each county is entitled and forward the same by public conveyance to the county auditor of the county. If any county seat is so situated that the laws, journals and documents cannot be forwarded by public conveyance, they shall be forwarded to a secure place as near such county

seat as practicable, and the secretary of state shall notify the county auditor, in writing of the delivery of the same at such points, and the county auditor shall contract with some person to convey the same to the county seat.

§ 68. Document fund, appropriation for. For the purpose of defraying the expenses incident to the provisions of the four preceding sections there is hereby annually appropriated the sum of two hundred dollars to be designated "Document Fund," upon which the secretary of state can draw at such times and for such amounts as may be necessary in the discharge of the duties imposed by such sections. § 29, c. 119, 1890.

§ 69. County auditors, when to deliver documents, etc. The county auditor shall deliver the laws, journals and documents to such persons and institutions as are entitled to receive them, when requested so to do, and shall take receipts therefor and file the same in his office subject to inspection. § 30, c. 119, 1890.

§ 70. When documents officially printed. Faith and credit given. All laws, journals and documents printed and published by any contractor under the provisions of this article, and duly certified by the secretary of state as provided herein, shall be deemed to be officially printed and published, and full faith and credit shall be given to them as such. § 31, c. 119, 1890.

§ 71. Where laws, journals and documents preserved. All copies of the journals, executive documents and laws which are not distributed under the provisions of this article shall be preserved in the office of the secretary of state, subject to distribution by law. § 32, c. 119, 1890.

§ 72. When official reports to be made. All county, township, city and village officers, and all officers and boards of state institutions and all officers connected with the public works of the state, and all corporations, except such as are required to make their reports at some other specified time, which are required by law to make annual reports for any purpose to any state officer, shall make out and transmit the same on or before the fifteenth day of August of each year to the proper officer. For the purpose of making out such report the year shall begin on the first day of July of each year and end on the last day of June of the succeeding year. § 33, c. 119, 1890.
am'd.

§ 73. Reports to governor and legislative assembly. When to be made. All officers and boards required to make reports to the governor or to the legislative assembly shall make such reports on or before the fifteenth day of September, and all such reports, whether required annually or biennially, shall be made to and include the thirtieth day of June preceding. The governor upon receiving such report shall deliver the same to the commissioners of public printing to be printed, and he shall lay such printed reports before the legislative assembly at its next session together with his biennial message. § 34, c. 119, 1890.

§ 74. Bids, when received. No bids shall be received after the hour specified in the published notice, and no bid shall be changed after the same is received.

§ 75. Penalty for violation. Any member of such board who violates any of the provisions of this article is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than one thousand nor more than five thousand dollars.

§ 76. Printing accounts to be approved. Appropriation for. All accounts for printing and binding required by the governor § 1, c. 18, 1890.

and other state officials, and for such printing and binding as may be authorized by the legislative assembly shall be certified to according to law, and when such accounts shall have been approved in writing by the secretary of state, whose duty it shall be to keep a record of and carefully examine all printing so authorized, the state auditor shall draw his warrant on the state treasurer for such sums as may be found due, and there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated a sum sufficient to pay for said printing.

§ 2, c. 3, Pol. C. **§ 77. Secretary to arrange and correct laws.** In arranging the laws, memorials and resolutions for publication the secretary of state is authorized to make such corrections in orthography, grammatical construction and punctuation of the same as in his judgment shall be proper; but when any words or clauses are inserted, the same shall be enclosed in brackets.

§ 7, c. 3, Pol. C. **§ 78. Officers to deliver laws to successors.** Whenever any person shall be elected to fill any of the county, township or district offices in this state it shall be such person's duty before taking possession of the office to procure from the county auditor of his county a copy of the receipts filed with such auditor by the outgoing officer for any volumes of the laws of this state; which copy of receipt the person so elected shall exhibit to his predecessor in office at the time he assumes the duties of his office, and shall require from his predecessor all the volumes of laws which he may have received, as shown by such receipt, and it shall be the duty of such officer after having received from his predecessor the volumes of laws to make out duplicate receipts of the same, one of which receipts he shall give to his predecessor in office, and the other he shall forthwith transmit to the county auditor of the county, who is hereby required to file the same in his office.

§ 10, c. 3, Pol. C. **§ 79. Secretary of state to sell statutes.** The secretary of state shall sell to any person applying therefor the volumes of laws of this state for the cost and ten per cent added, and pay over to the state treasurer all sums so received, taking the official receipt of such treasurer therefor.

§ 11, c. 3, Pol. C. **§ 80. Copies of laws for state library.** Ten volumes of the laws passed by each legislative assembly shall be placed in the state library by the secretary of state, and shall be kept therein for the use of any person visiting such library, but shall not be loaned or otherwise disposed of.

§ 17, p. 900 code
77. **§ 81. Conflicts adjusted.** If the provisions of any code, chapter or article, conflict with or contravene the provisions of any other code, chapter or article, the provisions of each code, chapter or article must prevail as to all matters in question arising thereunder out of the same subject matter.

§ 18, p. 900 code
77. **§ 82. Secretary of state authorized to arrange statutes, etc.** In the publication of codes and general statutes the secretary of state has power without altering the general plan to renumber and readjust sections, chapters, articles and subdivisions, and also to place and distribute the general statutes not now embraced in the codes in the same under the appropriate chapter or other heading.

CHAPTER 3.

EXECUTIVE DEPARTMENT.

ARTICLE 1.—THE GOVERNOR.

§ 83. **Powers and duties of governor.** In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.

2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedies as the law allows. If the remedy is imperfect, acquaint the legislative assembly therewith at its next session.

3. He is to make appointments and fill vacancies as required by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state of the United States.

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state, and may employ such additional counsel as he may deem expedient.

6. He may require the attorney general or state's attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid any state's attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the penitentiary, or of any person who has committed or who is charged with the commission of an offense punishable with death.

9. The duty of the governor respecting fugitives from justice is prescribed by the code of criminal procedure.

10. He must issue patents for land as prescribed by the provisions of this code.

11. He must discharge the duties of a member of the following state boards: equalization; university and school lands; trustees of public property; trustees of the deaf and dumb school; trustees of the normal schools and the state board of canvassers.

12. He has such other powers and must perform such other duties as are or may be devolved upon him by law.

§ 84. **Records in office.** The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. An account of all his official expenses and disbursements including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

3. A register of all appointments made by him, with date of commission, names of appointees and predecessors.

These records and the originals of all applications, petitions, recommendations and reports therein mentioned shall be preserved in the office of the governor; but whenever any application for appointment to office is refused by him, he may in his discretion return the papers relating to the application.

§ 85. **Persons acting as governor.** Every provision of the laws of this state in relation to the powers and duties of the governor, and in relation to the acts and duties to be performed by others towards him extends to the persons performing for the time being the duties of governor.

§ 86. **Salary of governor.** The annual salary of the governor, to include all services rendered ex officio as member of any board or commission, as now required or which may be by law devolved upon him, is three thousand dollars.

ARTICLE 2. — THE LIEUTENANT GOVERNOR.

§ 87. **Duties of lieutenant governor.** The duties of the lieutenant governor are as prescribed in the constitution.

§ 1, c. 93, 1893,
am'd.

§ 88. **Salary of lieutenant governor.** The lieutenant governor shall receive an annual salary of one thousand dollars, and when he acts as governor, he is entitled to receive during the time he so acts the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled as lieutenant governor to any other compensation.

§ 1, c. 84, 1891.

§ 89. **President pro tem, to act as, when.** In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office or the disability of the lieutenant 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 president pro tempore of the senate; and when presiding over any meeting of the senate, all the powers and duties of the office of lieutenant governor shall devolve upon the president pro tempore of the senate.

ARTICLE 3. — THE SECRETARY OF STATE.

§ 90. **Custody of records.** The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution.
2. Of all the acts and resolutions passed by the legislative assembly.
3. Of the journals of the legislative assembly.
4. Of the great seal.
5. Of all books, records, deeds, parchments, maps and papers kept or deposited in his office pursuant to law.

§ 91. **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1. To attend every session of the legislative assembly for the purpose of receiving bills and resolutions therefrom, and to perform such other duties as may devolve upon him by resolution of the two houses, or either of them.

2. To keep a register of and attest the official acts of the governor.

3. To affix the great seal with his attestation to commissions, pardons and other public instruments to which the official signature of the governor is required.

4. To record in proper books all conveyances made to the state and all articles of incorporation filed in his office.

5. To receive and record in proper books the official bonds of all state officers, from whom bonds are required by law, including his own, and then deliver the originals to the state treasurer, excepting the bond of the state treasurer, of which he shall remain the custodian.

6. To take and file in his office receipts for all books distributed by him and to direct the county auditor of each county to do the same.

7. To certify to the governor the name of any person who has received at any election the highest number of votes for any office the incumbent of which is commissioned by the governor.

8. To furnish on demand to persons paying the fees therefor a certified copy of all or any part of any law record or other instrument filed, deposited or recorded in his office.

9. To keep a fee book in which must be entered all the fees, commissions and compensation of whatever nature or kind by him earned, collected or charged, with the date, name of payor, paid or unpaid, and the nature of the services in each case, which book must be verified annually by his affidavit entered therein.

10. To file in his office descriptions of the seals in use by the different state officers, and to furnish such officers with new seals when they may be required.

11. To discharge the duties of a member of the following state boards: equalization; the state board of canvassers; trustees of public property; university and school lands; commissioners of public printing; and to perform such other duties as are now or may be hereafter prescribed by law.

12. To report to the governor at the time prescribed by law for other state officers to report all moneys received from any source for services performed and accompany such report with a detailed statement under oath of the manner in which the appropriations for his office have been expended.

13. He must distribute the bound volumes of the decisions of the supreme court as provided in section 399.

§ 92. Distribution of laws, resolutions and journals. Immediately after the laws, resolutions and journals of the legislative assembly are bound he shall distribute the same to the persons entitled thereto under the provisions of article 4 of chapter 2 of this code.

§ 93. To mark books distributed. The secretary of state must indelibly mark each book distributed to officers of this state, except members of the legislative assembly, with the name of the county to which, and the official designation of the officer to whom the same is sent, and such book shall remain the property of the state and must be by the officers receiving them delivered to their successors.

§ 94. To receive, keep and distribute supplies. It is the duty of the secretary of state to receive and keep the supplies and articles purchased by the commissioners of printing for the legislative assembly and state officers, and he shall distribute the same from time to time as required, on the requisition of the proper state or legislative officer, taking a receipt therefor and filing such requisition in his office. He must keep a book to be known as a book of supplies in which he must

enter a complete list of all stationery, books, articles or other supplies furnished him by such board, making a separate list of each class of articles, and all purchases made by the board, the amount and cost of each article and the amount and cost of each article furnished each officer or board and each member and officer of the legislative assembly. He must embody in his report to the legislative assembly a statement showing the amount of supplies purchased and disposed of as aforesaid.

§ 95. Fees. The secretary of state for services performed in his office, must charge and collect the following fees:

1. For a copy of any law, resolution, record or other document or paper on file in his office, ten cents per folio.
2. For affixing his certificate and seal to any document, one dollar; for affixing his signature and seal without a certificate, fifty cents.
3. For filing articles of incorporation of corporations for profit, five dollars; other corporations, two dollars.
4. For issuing a certificate of corporate existence, three dollars.
5. For recording official bonds, two dollars.
6. For each commission or other document signed by the governor and attested by the secretary of state, except pardons and military commissions, three dollars.
7. For each patent for land issued by the governor, if for one hundred and sixty acres or less, one dollar, and for each additional one hundred and sixty acres or fraction thereof, one dollar.
8. For searching records and archives of the state, one dollar.
9. For filing and recording notice of appointment of agent, three dollars.
10. For filing and recording notice of removal of place of business, three dollars.
11. For filing certificate of increase or decrease of capital stock, three dollars.
12. For issuing a certificate of increase or decrease of capital stock, three dollars.
13. For filing a certificate of continuance of existence of a corporation, three dollars.
14. For issuing such certificate, three dollars.
15. For recording miscellaneous records, papers or other documents, fifteen cents per folio, and for filing any paper not otherwise provided for, twenty-five cents. But no member of the legislative assembly or state or county officer can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. All fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and placed to the credit of the salary fund.

§ 96. Salary of secretary of state. The annual salary of the secretary of state, to include all services rendered ex officio as member of any boards or commission as now required, or which may be by law hereafter devolved upon him, is two thousand dollars.

§ 97. Official bond. The secretary of state shall give a bond to the state in the sum of ten thousand dollars.

ARTICLE 4.—THE STATE AUDITOR.

§ 98. Duties of. It is the duty of the state auditor:

1. To superintend the fiscal affairs of the state.

2. To report to the governor on or before the fifteenth day of November next preceeding each regular session of the legislative assembly a statement of the funds of the state, its revenues, of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriation and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.

3. To accompany his biennial report with tabular statements showing the amount of each appropriation for the two preceding fiscal years, the amount expended and the balance, if any; also showing the amount of revenue chargeable to each county for such years, the amount paid and the amount unpaid or due therefrom.

4. When requested, to give information in writing to either house of the legislative assembly, relating to the fiscal affairs of the state or to the administration of his office.

5. To suggest measures for the improvement and management of the public revenue.

6. To keep and state all accounts in which the state is interested.

7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when he came into office and with all money received by him and credit him with all the warrants drawn on and paid by him.

9. To keep a registry of warrants showing the fund upon which they are drawn, the number, in whose favor, for what issued, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered, and to register all orders or certificates drawn upon the state treasurer.

10. To audit all claims against the state, the payment of which is authorized by law.

11. To examine and settle the accounts of all persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipts therefor to give such person a release, and charge the treasurer with such amount.

12. To require, in his discretion, any person presenting an account for settlement to be sworn before him, and to answer orally or in writing as to any facts relating thereto.

13. To require all persons who have received any moneys belonging to the state, and who have not accounted therefor to settle their accounts.

14. To inspect, in his discretion, the books of any person charged with the receipt, safe keeping or disbursement of public moneys.

15. To require at such times and in such forms as he may designate all persons, who have received money or securities or who have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him, and all such persons must render such statements when so required by said auditor.

16. To direct and superintend the collection of all moneys due the state and institute suits in the name of the state for all official delinquencies in relation to the assessment, collection and payment of the revenue, and against persons who by any means have become possessed of public moneys or property and who fail or neglect to pay for or deliver the same, and against all persons indebted to the state.

17. To draw warrants on the state treasurer for the payment of money directed by law to be paid out of the treasury; which warrants shall be numbered consecutively in the order in which they are drawn; but no warrant must be drawn unless authorized by law, nor unless there are funds in the treasury applicable to the payment thereof to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify for what it is drawn, and when the liability accrued.

18. To furnish the state treasurer monthly with a list of all warrants drawn upon the treasury, specifying the amount and number of each warrant and the name of the person in whose favor it is drawn.

19. To authenticate with his official seal all drafts and warrants drawn by him and all copies of papers issued from his office.

20. To discharge the duties of a member of the following state boards: equalization, state canvassers, trustees of public property, university and school lands and commissioners of public printing, and to perform such other duties as are or may be prescribed by law.

§ 99. Special duties connected with school fund. The state auditor must keep a separate account of the school fund and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must on or before the third Monday in February, May, August and November of each year certify to the superintendent of public instruction the amount of the state tuition fund; he shall also at the same time make a statement to such officer of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment and the sources from which the same accrued, and he shall also perform such duties and draw such warrants in reference to the school fund of the state as now are or hereafter may be prescribed by law.

§ 100. Proceedings against defaulters. Whenever any person has received moneys or has moneys or other personal property which belongs to the state by escheat or otherwise, or has been intrusted with the collection, management or disbursement of any moneys, bonds or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the state auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make such settlement, or who fails to pay into the state treasury any money belonging to the state upon being required so to do by the state auditor within twenty days after such request, the state auditor must state an account with such person, charging interest at the rate of twelve per cent per annum from the time of the failure; a copy of which account shall be prima facie evidence in any suit of the things therein stated; but in case the state auditor cannot for want of information state an account, that fact may be alleged and in such case the amount of money or other property which is due or belongs to the state may be stated generally.

§ 101. **To have access to all state offices.** The state auditor shall have access to all state offices during business hours for the purpose of inspecting such books, papers and accounts therein as may concern his duties.

§ 102. **Legislative inspection of books of.** 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. § 9, c. 7, Pol. C.

§ 103. **Must transmit list of taxable lands.** He shall transmit to the county auditor of each county on or before the first day of May of each year a list of lands within such county which shall have become subject to taxation during the preceding year, agreeably to the information by him received from the land offices in the state. § 10, c. 7, Pol. C. '9, c. 49, 1879. '10, c. 118, 1881.

§ 104. **Transmit forms and instructions to auditors.** He shall from time to time prepare and transmit to the county auditor 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 levying, charging, collecting and accounting for the public revenue; and assessors and treasurers shall observe such forms and instructions. § 11, c. 7, Pol. C.

§ 105. **May remit tax penalties.** The auditor is 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 taxes assessed in any county. § 12, c. 7, Pol. C.

§ 106. **Salary of.** The annual salary of the state auditor, to include all services rendered as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is two thousand dollars, and all fees received by him shall be paid into the state treasury at the end of each month.

§ 107. **Official bond.** The state auditor must execute an official bond in the sum of twenty thousand dollars.

ARTICLE 5.—THE STATE TREASURER.

§ 108. **Duties of.** It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To register the orders or certificates of the state auditor, delivered to him when moneys are paid or to be paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor a duplicate receipt showing the amount, the source from which the money accrued and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants drawn by the state auditor out of the funds upon which they are drawn and in the order in which they are presented.

5. Upon the payment of any warrant to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds. He shall receive in payment for public dues the warrants drawn by the state

auditor in conformity with law, or redeem the same, if there is 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 thereof "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.

8. To report to the state auditor on the last day of each month the amount disbursed for the redemption of bonds, and any payment of warrants during the month, which report must show the date and number of such bonds and warrants, the funds out of which they were paid and the balance in cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor on or before the fifteenth day of November next preceding each regular session of the legislative assembly the exact balance in the treasury to the credit of the state with a summary of the receipts and payments of the treasurer during the two preceding fiscal years; and to make a semi-annual report to the governor of all moneys received from all sources, and all moneys disbursed, and for services performed by him, which report must be made under oath.

11. To authenticate with his official seal all writings and papers issued from his office.

§ 1, c. 96, 1893.

12. To discharge the duties of a member of the board of state canvassers and of the board of commissioners of public printing, and to perform such other duties as are or may be prescribed by law.

§ 2, c. 96, 1893.
am'd.

13. To keep a book in which he must enter all warrants paid, giving the names of the owners, and the number and amounts of the warrants.

§ 3, c. 96, 1893.
am'd.

14. To keep all moneys belonging to the state in his own possession until disbursed according to law. But nothing in this subdivision prohibits him from making special deposits for the safe keeping of public moneys.

§ 4, c. 96, 1893.

15. To post at the door upon the outside of his office a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the preceding six months.

§ 5, c. 96, 1893.

16. To keep his books open at all times for the inspection of the governor, the state auditor, the public examiner and any committee appointed to examine them by either house of the legislative assembly.

§ 7, c. 96, 1893.

17. To report semi-annually to the governor in writing and under oath the amount of all moneys in his hands to the credit of each fund, and the place where the same is deposited, and the number and amount of every warrant paid or redeemed by him during the preceding six months. The governor must verify said report, and cause the same to be immediately published in at least one daily paper printed at the seat of government.

§ 8, c. 96, 1893.

§ 109. Examination. Suspension of treasurer. If the state examiner upon examination finds that the books of the state treasurer do not correspond with the amount of funds on hand, or do not

show the actual condition of the funds, or if it appears to the state examiner that any moneys belonging to the state have been embezzled, diverted or in any manner taken from the treasury without authority of law, or that the state treasurer has been guilty of negligence in keeping his books or taking care of the public moneys, he must certify the fact to the governor; who upon the receipt of such certificate must forthwith take possession of all books, moneys, papers and other property belonging to the state, which have come into the possession of such state treasurer by virtue of his office, or otherwise, and must temporarily suspend him from his office of state treasurer.

§ 110. Suspension and appointment by governor. The governor must thereupon, with the auditor and public examiner, examine the books, papers and all matters connected with the office of the state treasurer, so suspended, and if it appears to the said governor, state auditor and state examiner on such examination, that such state treasurer has embezzled or converted to his own use the public moneys, or has been negligent in keeping his books, or in taking care of public moneys, the governor on the certificate of said state auditor and said state examiner to that effect may in his discretion remove and appoint another person to fill the place of said suspended state treasurer, and such person so appointed must execute an official bond and enter upon the office of state treasurer as provided by law. The governor must report all his acts done under this and the next preceding section to the next succeeding legislative assembly, and the state treasurer so appointed holds his office until the suspended state treasurer is reinstated, or his successor is elected and qualified. § 9, c. 96, 1893.

§ 111. Redeemed warrants deposited with auditor. He shall on the last day of March, June, September and November deposit in the office of the state auditor all warrants by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor.

§ 7, c. 8, Pol. C.
11, c. 183, 1890.

§ 112. Prohibited from purchasing warrants or accounts. He shall in no case purchase or receive any warrants redeemable at the treasury or any audited account at a less value than is expressed therein; nor shall he receive any fees or reward, aside from his annual salary, for transacting any business connected with the duties of his office. § 10, c. 8, Pol. C.

§ 113. Delinquencies, accountable for. If in any instance the treasurer shall neglect to call to account any delinquent, whereby the public revenue may suffer a 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. § 12, c. 8, Pol. C.

§ 114. To register state bonds. The state treasurer upon presentation to him of any bond issued by, or assumed by the state of North Dakota, and upon application to him in writing by the owner of such bond for the registration thereof shall register such bond (first detaching and canceling all unmatured coupons, in case such bond is a coupon bond), in the name of the said owner in a book which he shall keep for that purpose; and after such registration of ownership as aforesaid, duly indorsed by the treasurer upon the bond so registered, no transfer of ownership of such bond shall be deemed valid unless registration of such transfer shall have been made by the state treasurer as aforesaid; and such bond shall continue subject to registration and to transfer at the option of the owner. § 1, c. 38, 1891.
am'd.

§ 2, c. 38, 1891.
am'd.

§ 115. Registration vests ownership. The registration of bonds, as provided for in the last section, shall vest the ownership thereof, both principal and interest, in the person in whose name the last registration is made; and the state treasurer shall remit in current exchange on New York City to the person in whose name the last registration is made the interest on such bonds as it from time to time becomes due, and the principal thereof at maturity.

§ 3, c. 38, 1891.

§ 116. Fee for registry. For each registration of ownership or transfer of ownership made as herein provided the treasurer shall be entitled to receive a fee of fifty cents for each bond so registered; provided, that all fees so received shall be covered into the general fund of the state.

§ 117. Salary of. The annual salary of the state treasurer, to include all services rendered ex officio as member of any board or commission as now required, or which may hereafter be required of him by law, is two thousand dollars.

§ 10, c. 96, 1893.

§ 118. Official bond. The state treasurer must execute an official bond in the sum of two hundred and fifty thousand dollars.

ARTICLE 6. — THE ATTORNEY GENERAL.

§ 4, c. 21, 1890.

§ 119. Duties of. The duties of the attorney general shall be:

1. To appear for and represent the state before the supreme court in all cases in which the state is interested as a party.

2. To institute and prosecute all actions and proceedings in favor of or for the use of the state, which may be necessary in the execution of the duties of any state officer.

3. To appear and defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or of the United States.

4. To consult with and advise the several state's attorneys in matters relating to the duties of their office; and when in his judgment the interests of the state require it, he shall attend the trial of any party accused of crime and assist in the prosecution.

5. To consult with and advise the governor and all other state officers, and give, when requested, written opinions upon all legal or constitutional questions relating to the duties of such officers respectively.

6. To prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.

7. To give written opinions, when requested by either branch of the legislative assembly, upon legal questions.

8. To enforce the proper application of funds appropriated to the public institutions of the state, prosecute breaches of trust in the administration of such funds, and when necessary prosecute corporations for failure or refusal to make the reports required by law.

9. To keep in proper books a register of all cases prosecuted or defended by him in behalf of this state or its officers, and of all proceedings had in relation thereto, and to deliver the same to his successor in office.

10. To keep in his office a book in which he shall record all the official opinions given by him during his term of office, which book shall be by him delivered to his successor in office.

11. To pay into the state treasury all moneys received by him for the use of the state.

12. To attend to and perform any other duties which may from time to time be required by law.

§ 120. Annual report of. He shall make an annual report to the governor on or before the fifteenth day of November, stating the number, character, condition and result of the actions prosecuted or defended by him in behalf of the state, the cost of prosecuting or defending each action and the amount of fines and penalties collected. § 5, c. 21, 1890.

He shall also direct attention to any defect in the practical operations of the laws relating to revenue and criminal offenses, and suggest such amendments as in his judgment are necessary to subserve the public interests.

§ 121. Salary of. The annual salary of the attorney general, to include all services rendered ex officio as member of any board or commission as now required, or which may hereafter be devolved upon him by law, is two thousand dollars. And in addition thereto he shall be paid all his necessary expenses in attending court upon official business, to be audited and paid as provided by law in other cases.

§ 122. Assistant, how appointed. The attorney general may appoint an assistant, whose appointment shall be in writing and filed in the office of the secretary of state. Such assistant attorney general shall have the same powers and authority as the attorney general. He shall before entering on the duties of his office take and subscribe upon his appointment the official oath prescribed by law. § 1, c. 17, 1889. am'd.

ARTICLE 7.—THE COMMISSIONER OF AGRICULTURE AND LABOR.

§ 123. Duties of. It shall be the duty of the commissioner of agriculture and labor to collect, systematize and present in biennial reports to the legislative assembly statistical details relating to all departments of labor in the state, such as the hours and wages of labor, cost of living, amount of labor required, estimated number of persons depending on daily labor for their support, the estimated number of persons employed by the several industries within the state, the operation of labor saving machinery and its relation to hand labor, a description of the different kinds of labor organizations in existence in this state and what they have accomplished in favor of the class for which they were organized. Such statistics may be classified as the commissioner of agriculture and labor deems best. § 1, c. 46, 1890.

§ 124. Duty of all officials to furnish certain information. **Penalty.** It shall be the duty of all state, county, township and municipal officers to furnish upon the written request of the commissioner of agriculture all the information in their power necessary to assist in carrying out the objects of this article. For the purpose of obtaining statistics relating to manufactures and mining the commissioner of agriculture shall procure in a manner that may seem best to him, the names and addresses of all the manufacturers and mine owners and operators in the state, and shall transmit by mail to each owner, operator or manager of each shop, mill, manufacturing establishment or mine, not later than the first day of July of each year, suitably prepared blanks, embodying inquiries into the subjects upon which the commissioner is required or authorized to prepare statistics, which blanks shall be filled out complete and returned to the commissioner not later than the first day of August following. The information so obtained shall be preserved, systematized and tabulated by the com- § 2, c. 46, 1890. § 1, c. 115, 1891.

missioner, but no information concerning the business or affairs of any individual, firm, company or corporation shall be divulged or in any manner made public by the commissioner or any one in the employ of his office, and any violation of this provision shall subject the party violating to a fine of not more than five hundred dollars or to imprisonment of not more than one year, or both such fine and imprisonment. The refusal or neglect of any such owner, operator or manager of any shop, mill, manufacturing establishment or mine to supply the information asked by the commissioner within the time designated shall be construed as a violation of the following section and shall subject the party so offending to the penalties therein prescribed; provided, that no prosecution shall be begun against such persons for such neglect or refusal until at least twenty days after a second notice and blank shall have been mailed them by the commissioner.

§ 3, c. 46, 1890.
§ 2, c. 115, 1891.

§ 125. Penalty for obstructing commissioner. Any person who willfully impedes or obstructs the commissioner in the full and free performance of his duties shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten nor more than fifty dollars, or by imprisonment of not less than seven nor more than thirty days in the county jail, or by both. The refusal or neglect of any person for himself or for any person, firm, company or corporation of which he may be a member, or agent, to furnish the information or statistical statement required to be furnished to assessors, shall be construed to be a violation of the provisions of this section, and it is hereby made the duty of the county auditor to report such violation with the names and post office address and place of residence of the violator as furnished him by the assessor to the state's attorney for the county in which such violations occurred, and the state's attorney shall forthwith proceed to enforce the penalty provided in this section against such persons; and he is hereby authorized to subpoena the assessor and such other witnesses as may be necessary, and to introduce the assessor's returns in evidence.

§ 5, c. 46, 1890.

§ 126. Power to send for persons, books and papers. He shall have power to send for persons, books and papers whenever in his opinion it is necessary, and he may examine witnesses under oath, being hereby authorized to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in his office.

§ 8, c. 46, 1890.

§ 127. Duty to promote immigration. He shall look after and devise means to advance the immigration interests of the state, and to encourage and promote the permanent settlement and improvement of all sections of the state. He shall have charge of the preparation in manuscript, the publication and distribution by mail and otherwise of any and all documents and articles of reading matter designed to convey correct and full information on all matters pertaining to the growth and development of the agricultural, manufacturing, commercial and mining interests of the state. He shall attend to all correspondence relating to immigration and shall do all in his power by letter, by the use of published printed matter and through personal effort to secure the most liberal and extensive advertisement of the resources and opportunities of the state. It shall be his aim to induce the investment of capital in agriculture, in mining and in different industrial and mercantile pursuits, and to facilitate the coming to the state of persons and families seeking permanent location

for new homes. He shall procure the most favorable rates of fare obtainable from railroads and other transportation companies for persons coming to the state, and where such persons have formed a colony or party of considerable number, he shall be required to visit them, if necessary, and do all in his power to direct and assist them in making the necessary arrangements for transportation and in reaching the state.

§ 128. Have charge of public exhibits. He shall have charge of any exhibit of the products and resources of the state which may be made at any fair or exposition held at any point in the United States, and shall have authority to co-operate with any railroad company doing business within the state, and with any other persons interested with a view of securing such an exhibit at any fair or exposition held as aforesaid. § 9, c. 46, 1890.

§ 129. State statistician. The commissioner of agriculture shall be the state's statistician; it shall be his duty to obtain from assessors and other officers of the organized counties of the state, and to collate and prepare in tabulated form for reference statistics showing county, township and other municipal indebtedness of all kinds, the assessed valuation of real and personal property, and he shall also ascertain the amount of mortgage indebtedness and assessed value of real property owned by citizens as distinguished from corporations, the acreage in wheat, corn and other kinds of grain, the number of cattle, horses, hogs and other live stock, and the population, vital statistics and other information pertaining to and showing the condition of the growth and development of the state by counties. The commissioner of agriculture and labor may call upon the attorney general for such assistance as to him may seem necessary in the preparation of such blanks as may be needed for procuring the statistics contemplated in this act, and it is the duty of the attorney general to render such assistance. § 10, c. 46, 1890.
§ 3, c. 115, 1891.

§ 130. Reports of commissioner. When portions may be given out. The commissioner shall report to the legislative assembly the number of coal mines being operated within the state, the number of tons of coal being mined annually, the number of persons employed in coal mining, the wages paid coal miners and the cost per ton to mine coal at the different mines. The commissioner is hereby authorized to give out to the press of this or other states at any time such parts of any reports in course of preparation as may be sufficiently concluded to admit of publication, or such information regarding the statistics of the state as may in his judgment be of interest or value to the people, the design being to furnish to the people through the press as fresh information regarding the state and its industries and condition as possible without awaiting the official publication through biennial or other reports. § 11, c. 46, 1890.
§ 4, c. 115, 1891.

§ 131. Salary of. The commissioner of agriculture and labor shall receive an annual salary of two thousand dollars. § 1, c. 47, 1890.
am'd.

ARTICLE 8.—THE COMMISSIONER OF INSURANCE.

§ 132. Duties of. It is the duty of the commissioner of insurance:

1. To see that all laws of this state respecting insurance companies are faithfully executed.
2. To file in his office the articles of incorporation of all insurance companies organized or doing business in this state, and on application to furnish a certified copy thereof.

3. To report in detail to the attorney general any violation of law relative to insurance companies, their officers or agents.

4. To furnish to insurance companies required to make reports to him the necessary blank forms for the statements required.

5. To preserve in permanent form a full record of his proceedings and a concise statement of each company or agency visited or examined.

6. To furnish at the request of any person and on payment of his fees certified copies of any record or paper in his office, when he deems it not prejudicial to the public interests so to do, and to give such other certificates as may be provided by law.

7. To furnish a written report to the governor on or before the fifteenth day of November of each year showing his official acts, the receipts and expenditures of his department during the preceding fiscal year, the condition of the companies doing business in this state and such other information as will exhibit the affairs of his department; which report shall be printed, to the number of five hundred, at the expense of the state, and distributed among the members of the succeeding legislative assembly, and otherwise as provided by law. Such report must contain only an abstract of the reports of insurance companies.

8. To send a copy of his annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

9. To communicate on request to the insurance commissioner of any other state any facts which by law it is his duty to ascertain respecting companies of this state doing business within such state.

10. To have an official seal and to employ competent clerks, such clerks to discharge such duties as he may assign, and in case of his sickness or temporary absence from office, his chief clerk shall have authority to sign his name and perform such other duties as are required by law pertaining to the duties of such commissioner of insurance.

§ 133. Fees. The commissioner of insurance shall charge and collect such fees as are prescribed in chapter 14 of the civil code.

§ 134. Salary. The annual salary of the commissioner of insurance, to include all services performed by him, is two thousand dollars.

§ 135. When commissioner disqualified, state examiner to act. In case the commissioner of insurance is a director, officer, agent, attorney, a stockholder of or directly interested in any insurance company except as an insured, the examination of such company shall be made by the state examiner, or by some person appointed by him; and no officer or agent of any insurance company doing business in this state shall be deputed to examine the affairs of such company.

ARTICLE 9. — THE STATE EXAMINER.

§ 1, c. 95, 1893.

§ 136. Appointment. Term of Office. Qualifications. There shall be a state examiner who shall be appointed by the governor and confirmed by the senate, who shall hold his office for the term of two years, and until his successor has been appointed and qualified, unless sooner removed as herein provided. The state examiner shall be a skilled accountant, an expert in the theory and practice of book-keeping, and shall not be an incumbent of any public office in the state, or of any county, municipality or public institution therein,

and shall not own, hold or control any stocks, capital or bonds, or the office of trustee, assignee, officer or employee of any banking, annuity, safe deposit, trust company, moneyed or savings institution or corporation created under the laws thereof. In case of vacancy or death, removal, resignation or otherwise, the governor shall fill the same by appointment. The governor is authorized to remove from office any state examiner who violates, or fails faithfully to 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.

§ 137. Duty to examine accounts of public officers. The duties of the state examiner are to examine at least once every year the books and accounts of the secretary of state, state auditor, state treasurer, clerk of the supreme court, commissioner of insurance, county treasurer, county auditor and other county officers of any county, upon request by the board of county commissioners. § 2, c. 95, 1893.

§ 138. Duty to supervise accounts of public institutions. It shall be the duty of the state examiner to assume and exercise constant supervision over the books and financial accounts of the several public, educational, charitable, penal and reformatory institutions belonging to the state; to prescribe and enforce correct methods of keeping financial accounts of the state institutions by himself or duly appointed deputy, and instruct the proper officer thereof in the due performance of his duty concerning the same; to examine the books and accounts of all public institutions under the control of the state, and of all private institutions with which the state has any dealing, so far only as the same relates to such dealing, once in six months. § 3, c. 95, 1893.

§ 139. Additional duties. It shall be his duty to order and enforce a correct and, as far as practicable, uniform system of book-keeping by state and county treasurers and auditors so as to afford a suitable check upon their mutual actions and insure a thorough supervision and the safety of the state and county funds. He shall have full authority to expose false and erroneous systems of accounting, and when necessary instruct or cause to be instructed the state and county officers in the proper mode of keeping the accounts. It shall be the duty of the state examiner to ascertain the character and financial standing of all present and proposed bondsmen of state and county officers. He shall require county treasurers as often as he shall deem necessary to make verified statements of their accounts, and he shall personally, or by deputy, visit said offices 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 amounts of any and all assets and securities held by said officers on public account, and to ascertain the character and amount of any commissions, percentages or charges for services exacted by such officer without warrant of law. He shall report to the attorney general the refusal or neglect of any state or county officer to obey his instructions, and it shall be the duty of said attorney general promptly to take action to enforce compliance herewith. He 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 any financial officers as often as he thinks required by the public interest, § 4, c. 95, 1893.

and the governor may cause the result of such examination to be published, or at his discretion to take such action for the public securities as the exigencies demand, and if in his opinion the public interest requires it, he may suspend any such officer from further performance of duty, until examination is had, or such security obtained as may be demanded for the protection of the public funds.

§ 5, c. 95, 1893.

§ 140. Fiscal affairs of counties. It shall be his duty at the request of the county commissioners of any county in this state to examine and audit, compare and correct any books, records, papers, securities or other documents necessary to be had in any pending settlement of the fiscal affairs, or any necessary correction of the records of any county in this state. He shall have free access to all books, papers, records or other documents of any county in the state, found or deemed to be necessary, and is hereby empowered to take the records of any one county in this state to any other county in this state, when in his judgment it is deemed necessary, to compare and correct the same. And all county officers in this state are hereby required and enjoined to assist said state examiner in the discharge of his duties in all things which he may require of them as such county officer.

§ 6, c. 95, 1893.

§ 141. Examination of banks. It shall be his duty to visit once in each year without previous notice each of the banks, banking corporations and savings banks incorporated under the laws of this state, insurance, annuity, safe deposit, loan or trust companies and other moneyed corporations and thoroughly examine into their affairs and ascertain their financial condition. It shall be the duty of such examiner to inspect carefully and verify the validity and amount of the securities held by such institutions, examine into the validity of the mortgages held by savings institutions, and see that the same are duly recorded, and ascertain the amount of any discount or other banking transaction 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 purposes shall have power to examine the officers, agents and employees thereof and all persons doing business therewith. He shall forthwith report the condition of such corporation 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 may seem to demand.

§ 7, c. 95, 1893.

§ 142. Public officers to aid examiner. All officers of the state and counties of the state and all officers and employees of banking and other institutions mentioned in this act must afford all reasonable facilities for the investigations provided for in this act, and all such officers, managers and employees must make return and exhibit to the examiner under oath in such form and in such manner as he may prescribe, and each and every person so required who shall refuse and neglect to make such return or exhibit, or to make or to 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.

§ 143. Obstruction of examiner. Penalty. Every person who shall willfully obstruct or mislead the state examiner in the execution of his duties as hereby prescribed shall be subject to conviction and punishment therefor in the same manner as is now provided for the conviction and punishment of persons obstructing or hindering any officers, ministerial, judicial, or executive under the laws and authority of this state. And said examiner shall have full power and authority for the various purposes named to examine any 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 company and moneyed or insurance corporations and county or state officers and custodians of any county or state fund; also to examine under oath any or all trustees, managers, officers, or employees or agents of said institution and moneyed and savings corporations and other persons in the control of or doing business with said moneyed or savings institutions, and the county and state officers and custodians of county and state funds aforesaid. Said examiner is empowered to issue subpoenas and administer oaths in the performance of his duties, and any person refusing access by said examiner to any such books or papers, or any trustee, manager, officer, agent, clerk, employee, or other person aforesaid, who shall obstruct such access or refuse to furnish any required information, or who shall in any manner hinder a thorough examination required by this article 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 penitentiary for the term of one year. And when necessary, the state examiner shall employ stenographers or clerical help, the expense incurred therefor to be collected by the examiner from the county or corporation in interest. § 8, c. 95, 1893.

§ 144. Reports, contents of. The state examiner shall report to the governor the result of his examinations on the first Monday in November of each year; he must also make a report upon any particular matter at any time when required by the governor, and shall embody in such report an abstract of the condition and statistics of the several state institutions and the county and state finances ascertained by him, which report shall be printed to the number of five hundred copies and shall be included with other official reports in the volume of executive documents. The state examiner shall perform such other duties as shall be prescribed by law. § 9, c. 95, 1893.

§ 145. Salary. Deputy. Penalty for malfeasance. The salary of the state examiner for all services rendered in any capacity whatever shall be two thousand dollars per year and his actual and necessary expenses incurred in the discharge of his official duty. He is authorized with the approval of the governor to appoint a deputy who shall receive an annual salary of eighteen hundred dollars and his actual and necessary expenses. The salary and expenses of the state examiner and his deputy shall be audited and paid in the same manner as the salary and expenses of other state officers. § 10, c. 95, 1893.

§ 146. Official bond. The state examiner must execute an official bond in the sum of ten thousand dollars. § 11, c. 95, 1893.

ARTICLE 10. — THE STATE WEATHER BUREAU.

§ 1, c. 127, 1893.

§ 147. **Establishment of service.** There is hereby established in this state a weather and crop service, co-operating with the weather bureau of the United States, for the purpose of selecting crop statistics and meteorological data, and more widely disseminating the weather forecast and storm and frost warning, and to promote a general knowledge of meteorological science and the climatology of the state.

§ 2, c. 127, 1893.

§ 148. **Central station at seat of government.** The central station of said weather and crop service shall be at the seat of government under the charge of a director, such director to be an official of the United States weather bureau, who may be designated for that purpose by the chief of the weather bureau at Washington, D. C.

§ 3, c. 127, 1893.

§ 149. **Director to establish volunteer stations. Monthly reports.** Said director shall establish such volunteer stations throughout the state as he may deem advisable, and shall appoint observers thereat. He shall supervise such volunteer stations, receive reports therefrom of meteorological events and crop conditions, tabulate the same for permanent record, and issue for free distribution a weekly weather crop bulletin during the seasons from April first to October fifteenth, and he shall also edit and cause to be published for free distribution a monthly weather report, containing meteorological and agricultural matter of public interest and educational value; provided, however, that not more than five hundred copies of said report shall be published each month.

§ 5, c. 127, 1893.

§ 150. **Annual report to governor.** Said director shall also compile an annual report, addressed to the governor, to be printed and bound in such numbers as the commissioners of public printing may direct; such reports to contain a complete review and summary of the results of the year's labors and observations.

§ 6, c. 127, 1893.
§ 1, c. 20, 1895.

§ 151. **Appropriation, how expended.** There is appropriated out of any funds in the state treasury not otherwise appropriated, or as much thereof as may be necessary, the sum of five hundred dollars annually for expenses of such weather and crop service. Such appropriation to be expended upon the order of the director, subject to the approval of the governor.

ARTICLE 11. — THE STATE HISTORICAL COMMISSION.

§ 1, c. 70, 1895.

§ 152. **How constituted.** The governor, auditor, secretary of state, commissioner of agriculture, William H. Moorhead and the president of the North Dakota historical society shall constitute an historical commission for the state of North Dakota.

§ 2, c. 70, 1895.

§ 153. **Duties.** It shall be the duty of this commission to collect and preserve the records and relics pertaining to the early history, early settlement and development of North Dakota. It shall collect, arrange and preserve a library of books, pamphlets, papers, manuscripts, photographs, paintings, sketches, cabinets of minerals, Indian archeological and other curiosities and material illustrative of the civil, political, religious, literary and natural history of the state. It may receive bequests for the purposes of this act, and shall expend the same for the purchase of historical, genealogical and other books and collections suitable for this purpose, and may receive contributions from societies, corporations and individuals of books, pamphlets, papers and other matter herein contemplated, and shall faithfully

preserve or apply the same for the purposes herein stated. They shall provide a room in the capitol for the safe keeping and arrangement of the records and collections of this commission and the North Dakota historical society when co-operating with it.

CHAPTER 4.

PUBLIC BOARDS.

ARTICLE 1. BOARD OF TRUSTEES OF PUBLIC PROPERTY.

§ 154. **Board, of whom composed.** The governor, secretary of state and state auditor are constituted a board of trustees of public property, and such board shall have charge and control of the capitol, the executive mansion and the park and public grounds connected therewith. § 1, c. 162, 1887. am'd.

§ 155. **Board to report estimates to legislative assembly.** Such board shall, at the opening of each session of the legislative assembly, report to it an estimate of the appropriation necessary to defray the expenses of keeping the capitol building, executive mansion and public grounds in repair, and for fuel and other incidental expenses for keeping and maintaining the state offices for the ensuing two years. § 2, c. 162, 1887. am'd.

ARTICLE 2.—BOARD OF AGRICULTURE.

§ 156. **Board, how created.** There is hereby created a department of agriculture for the promotion of stock breeding, agriculture and horticulture, manufactures and domestic arts, which department shall be managed by a board styled "State Board of Agriculture," to consist of one person from each judicial district in the state, who shall be appointed by the governor by and with the advice and consent of the senate, and who shall hold his office for two years, commencing on the first Tuesday of April next succeeding his appointment, and until his successor is appointed and qualified. All vacancies occurring therein, except when the legislative assembly is in session, shall be filled by the governor, and the person so appointed to fill a vacancy shall hold office during the remainder of the unexpired term and until his successor is appointed and qualified. § 1, c. 24, 1890. am'd.

§ 157. **Use of land conveyed to the state.** The real property near the city of Grand Forks heretofore conveyed to the state under the provisions of chapter 24 of the laws of 1890 shall be held by the state for the following purposes and no other, viz: For the purpose of exhibiting thereon under the management of the state board of agriculture, or its successors, annually, the agricultural, stock-breeding, horticultural, mining, mechanical, industrial and other pursuits and resources of the state including exhibits of the arts and educational progress. § 2, c. 24, 1890. am'd.

§ 158. **Annual exhibits.** There shall be annually held, under the direction of the state board of agriculture, upon the premises so conveyed, at such time as the board may determine, an exposition for the purposes specified in the last section, and such board is empowered to invite the co-operation of any other state, territory or country in such exposition. § 3, c. 24, 1890. am'd.

§ 4, c. 24, 1890.
am'd.

§ 159. Board of control. The custody and control of such premises, together with adjoining property which may be added thereto, is vested in the state board of agriculture, and the general office of such board wherein shall be kept the property and records of said board, may be located and maintained upon such premises or in the city of Grand Forks.

§ 4, c. 24, 1890.
am'd.

§ 160. Rules to be adopted by board. Such board is authorized and empowered to make any and all regulations, rules and provisions, not inconsistent with law, which shall in its judgment be necessary or proper for the government, management and control of such premises, and all expositions to be held thereon, and all such needful rules and regulations concerning the government and deportment of the public thereon as it may deem requisite and proper.

§ 5, c. 24, 1890.

§ 161. Premiums. Any and all moneys expended by such board for premiums or exhibits or other displays, or which may hereafter be appropriated by the state for such purposes, shall be expended only for such expositions and displays as shall be held by such board upon the premises aforesaid.

§ 7, c. 24, 1890.

§ 162. Meetings of board. Officers. The board shall meet annually at its office on the second Tuesday of March. At such meeting it shall elect from its own number a president and vice president of the board who shall serve until the next annual election.

§ 8, c. 24, 1890.

§ 163. Secretary, duties of. The board shall, at its annual meeting, appoint some person, not a member of the board, secretary thereof and shall fix his compensation, which shall not exceed two hundred dollars per annum, and he shall hold his office during the pleasure of the board. He shall perform all such duties as usually pertain to the office of secretary or as shall be required of him by such board.

§ 9, c. 24, 1890.

§ 164. Treasurer, duties of. The board shall also appoint at its annual meeting some person not a member of the board, treasurer thereof and fix his compensation, which shall not exceed one hundred dollars per annum. He shall give a bond in such sum and with such surety as the board shall require or direct, which bond shall be conditioned for the faithful discharge of the duties of his office. He shall keep an accurate itemized account of all moneys received by him as such treasurer, and also of all moneys paid out, and shall make an annual report of all such receipts and expenditures to the board at its annual meeting, or oftener if required by the board.

§ 10, c. 24, 1890.

§ 165. Special police, how appointed. The board, at or before the time of holding its annual fair, may appoint as many persons to act as police, as it may deem requisite to insure good order on or about the grounds where such fair is held. Each of such persons before entering upon his duties shall receive his authority from and take the oath of office before a judge or justice of the peace, and shall receive from such judge or justice of the peace, a certificate of appointment, which shall be indicated by some appropriate badge of office, and when so appointed they shall be clothed with full police powers.

§ 12, c. 24, 1890.

§ 166. Powers of board. State not liable for debts. The state board of agriculture may in its name contract and be contracted with, purchase, hold or sell property and sue or be sued; but the state shall not be liable for any debt or contract of such board.

§ 14, c. 24, 1890.

§ 167. Compensation of officers. The officers and members of the board, 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 board, which when certified by the president of the board shall be audited by the state auditor and paid by the state treasurer.

§ 168. **Board to make annual reports.** The state board of agriculture shall make an annual report to the governor on or before the fifteenth day of November, which report shall contain a full and complete statement of the acts of the board, and the board may append to and publish with its report, such essays upon agriculture, horticulture, manufacturing and the domestic arts, as, in the judgment of the board, the interests of the state require. Such report shall not contain more than five hundred printed pages, and one thousand copies thereof shall be printed and published annually in pamphlet form by the public printer of the state at contract rates. §§ 15, 16, c. 24, 1890. am'd.

ARTICLE 3.—BOARD OF UNIVERSITY AND SCHOOL LANDS.

§ 169. **Board, how constituted.** The governor, secretary of state, state auditor, attorney general and superintendent of public instruction shall constitute the board of university and school lands. The governor shall be president; the secretary of state, vice president and the superintendent of public instruction, secretary thereof. In the absence of the superintendent of public instruction at any meeting of the board the deputy superintendent of public instruction shall act as secretary, but shall not be entitled to a vote. Such board, when acting as such, must act personally; no member can be represented on such board by any assistant or clerk. § 2, c. 118, 1893. am'd.

§ 170. **Board, powers of.** Subject to the provisions of article 9 of the constitution and the provisions of this article, such board shall have the full control of the selecting, appraisement, rental, sale, disposal and management of all school and public lands of the state, including the real property donated to the territory of Dakota under the provisions of chapter 104 of the laws of 1883, except such as has been sold, and the investment of the permanent funds derived from the sale thereof, or from any other source, and shall have power to appoint a competent person to act as the general agent of the board in the performance of all its duties pertaining to the selection, sale, leasing or contracting in any manner allowed by law, and the general control and management of all matters relating to the care and disposition of the public lands of the state, all of whose official acts shall be subject to the approval and supervision of the board. The title of such agent shall be commissioner of university and school lands, and before entering upon his duties as such he shall take the oath prescribed for civil officers and give a bond in the penal sum of ten thousand dollars, with not less than two sureties, to be approved by the board, and recorded in the office of the secretary of state and filed, when recorded, in the office of the state treasurer. § 3, c. 118, 1893.

§ 171. **Meetings of board.** Such board shall meet at the office of the commissioner on the last Thursday of each month, at ten o'clock in the forenoon. Special meetings of the board may be held at any time at the written call of the president or any two members of the board. Any three members of the board shall constitute a quorum. § 4, c. 118, 1893.

§ 172. **Board to invest school funds, how.** Such board shall have the power and it is made its duty from time to time to invest § 5, c. 118, 1893.

any money belonging to any of the permanent funds of the common schools, university, school of mines, reform school, agricultural college and deaf and dumb asylum, normal schools, and all other permanent funds derived from the sale of public lands or from any other source, in bonds of school corporations within the state, bonds of the United States, bonds of the state of North Dakota, or in first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the county board of appraisal of the respective counties, but such board shall not purchase or approve the purchase of any bonds or mortgages except at a legal session thereof, nor unless every member of the board is notified by the secretary of said board in time to be present at such meeting, and notified also that the question of purchasing or acting on a proposition for the purchase of certain bonds or mortgages is to be considered at the meeting, nor unless a majority of all the members vote in favor of such purchase, and the vote on the purchase of every bond and mortgage shall be taken by yeas and nays and shall be duly recorded in the books of the board.

§ 6, c. 118, 1893.

§ 173. Records to be kept by secretary. The secretary shall enter in a suitable book kept for that purpose a full and correct record of all the proceedings of said board at each session thereof, which record when approved shall be signed by the president or presiding officer of the meeting and the secretary; he shall also keep such other books as may be necessary properly to register and describe all bonds and mortgages purchased or taken by it for the benefit of any of the permanent funds under its control. Such books shall be ruled so as to permit the registry of the name and residence of the person offering to sell any such bonds or mortgages, the district for which such offer is made, a description of the property covered by the mortgage, and a full and detailed description of every bond, whether United States, state or school district, and the date, number, series, amount and rate of interest of each bond, and when the interest and principal, respectively, are payable; and such record shall be made of every such bond and mortgage before the board shall act upon the question of purchasing the same. The secretary shall also keep in suitable books a record showing a detailed statement of the condition of all the permanent funds under control of said board, the amount of each fund, how invested, when due, interest paid and any other act in any manner connected with the management of said funds, and shall biennially report all such investments to the governor, to be laid before the legislative assembly. All the records and record books of such board shall at all times be open for inspection by the public.

§ 7, c. 118, 1893.

§ 174. Treasurer custodian of funds. All moneys belonging to the permanent funds of the common school and other public institutions derived from the sale of any of the public lands or from any other source shall be paid to and held by the state treasurer, and be subject to the order of such board, and shall be paid over to the order of the board for investment as provided in section 172 of this article, whenever the board requires the same for such investment. The state treasurer shall also be the custodian of all bonds, notes, mortgages and evidences of debt arising out of the management of the permanent funds derived from the sale of any of the public lands of the state or from any other source.

§ 175. Investments. How unpaid moneys to be collected. § 8, c. 118, 1893.

It shall be the duty of the state treasurer, from time to time as the same become due, to collect all moneys due and owing on any and all of the securities held by him for investment or for permanent funds, and from time to time, whenever required by the board, to make report of the amount of such collections to the board and a duplicate of the same to the state auditor. If any such moneys shall remain unpaid for thirty days after the same shall become due and payable, he shall make report in detail of all such unpaid amounts to the attorney general, whose duty it shall be to proceed to collect the same by civil action, to be brought and prosecuted in the name of the state.

§ 176. Manner of investing permanent funds. In the investment of the permanent funds under its control such board shall authorize the state auditor to draw his warrant on the state treasurer, payable out of the proper fund, for the purchase of the bonds or mortgages, which warrant, previous to delivery, shall be registered by the state treasurer in a book provided for that purpose. § 9, c. 118, 1893.

§ 177. Incidental expenses of board, how paid. The necessary incidental expenses of the board shall be paid out of the state treasury, and upon satisfactory vouchers therefor the state auditor shall issue his warrant for the same. § 10, c. 118, 1893.

§ 178. Appropriation for interest. There is hereby annually appropriated such sums as shall be found necessary for the expenses of purchase, and payment of accrued interest at the time of the purchase, of investment bonds or mortgages for the permanent funds under the control of said board, payable from the respective fund for which said purchase is made. § 11, c. 118, 1893.

§ 179. Term of office of commissioner. The first term of office of the commissioner provided for in this article shall be for three years from the date of his appointment and until his successor is appointed and qualified, and after the expiration of the first term, all succeeding terms shall be two years, and until his successor is appointed and qualified, subject to removal by the board. In case of vacancy by death, removal, resignation or any other cause, the board shall fill the same by appointment. § 12, c. 118, 1893.

§ 180. Salary of commissioner. The commissioner shall receive an annual salary of two thousand dollars. § 13, c. 118, 1893.

§ 181. Deputy commissioner. By and with the consent of the board, the commissioner may appoint a chief clerk, who before entering upon any of the duties devolving upon him by said appointment shall take and subscribe the oath of office required by law and shall execute to the state a bond with one or more sureties in the penal sum of five thousand dollars conditioned for the faithful discharge of his duties. § 14, c. 118, 1893.

§ 182. Duties of commissioner. The commissioner, under such directions as may be given by the board of university and school lands, shall have general charge and supervision of all lands belonging to the state, of all lands in which the state has an interest or which are held in trust by the state. He shall have the custody of all maps, books and papers relating to any of the public lands mentioned in this article. He shall procure the proper books, maps and plats in which to keep a complete record of all lands owned or held in trust by the state for schools, public buildings and for all other purposes, and shall keep true records of all the sales, leases, permits, § 15, c. 118, 1893.

patents, deeds and other conveyances of such lands made by the state, amount of money paid, date of sale and payment, description of land sold or leased, number of acres thereof, name of purchaser and designation of the fund that should be credited therewith. He shall direct all appraisements, sales, leases; shall execute all contracts of sale, leases, permits or other evidences of disposal of the lands, subject to approval by the board. Upon all contracts, leases or permits issued by the commissioner he shall certify the book and page where the same is recorded. He shall have an official seal with a proper device thereon; and the seal of the commissioner affixed to any contract of purchase, receipts or other instruments issued by him, duly countersigned by him as approved by the board, according to the provisions of this article, is prima facie evidence of the due execution of such contract or other paper. He shall biennially report to the legislative assembly through the board his work during the preceding term, showing the quantity of lands sold or leased, and the amount received therefor, the amount of interest moneys received to the credit of the several funds, expense of administration of his department, and all such other matters relating to his office as shall be necessary.

§ 16, c. 118, 1893.

§ 183. County board of appraisal, duties of. The county superintendent of schools, the chairman of the board of county commissioners and the county auditor of each county shall constitute the "County Board of Appraisers" of the public lands of the state in and for their county. The county board of appraisal in each county shall upon the request of the board of university and school lands, designate on or before such date as it may specify, the public lands of the state in their county, that in its judgment can be sold for ten dollars an acre or upwards on the terms prescribed in this article, designating the tracts separately and giving an approximate estimate of their selling value. Thereupon the commissioner shall, if so ordered by the board of university and school lands, prepare a list and order an appraisal of such lands as shall be designated in such list, and it is made the duty of such board of appraisers within ten days after the receipt of such list to examine such lands and appraise them at their cash value, as nearly as can be determined, describing each tract or subdivision in parcels not greater than one hundred and sixty acres, more or less, according to the government survey, and in smaller subdivisions thereof if so listed by the commissioners, and set opposite each described tract or parcel of land the appraised value per acre thereof; and when such appraisal is completed, which shall not be later than thirty days after the receipt of the order directing it, the county board of appraisers, or the members of the same who made such appraisement, shall certify to its correctness, and make duplicate copies thereof, one of which shall be forwarded immediately to the board of university and school lands, and the other filed in the office of the county auditor for reference. And in addition to the appraisal of such lands the county board of appraisal shall furnish such other information regarding the lands as may be required by the commissioner in the manner and form prescribed by him. The report of such appraisal shall be verified by each of such appraisers and shall disclose any interest, real or contingent, that any of such appraisers has in any of the lands or improvements so appraised. Any appraiser who willfully makes any false statement in such report, relative to such interest in any of the lands so appraised, or improvements thereon, shall be deemed guilty of a misdemeanor. For all services performed under

the requirements of this article the appraisers shall be paid at the rate of three dollars per day and actual traveling expenses, upon vouchers approved by the secretary of the board of university and school lands to be paid by the state treasurer upon warrants issued by the state auditor.

§ 184. Selecting and certifying lands for sale. The commissioner shall from the list of lands so appraised and reported by the county board of appraisers select all such tracts as have been appraised at ten dollars per acre and upwards, and upon approval of such selections by the board of university and school lands shall make and certify to the county auditors the list of lands in their respective counties that are offered for sale, and when transmitting such list shall designate the day and hour for the sale thereof; provided, that such sales shall take place only between the hours of ten o'clock A. M. and five o'clock P. M. and to be continued from day to day until all the lands advertised for sale shall have been sold or offered for sale, except that adjournments may be made for any intervening Sunday or legal holiday. § 17, c. 118, 1893.

§ 185. Notice of sale to be published. The county auditor shall immediately, on receipt of the list of lands mentioned in the preceding section, cause to be published in a paper designated by the county board of appraisers, as prescribed by section 158 of the constitution, a notice of such sale, with the list of lands properly described, that are to be offered for sale, together with the appraised value thereof and the terms and conditions of sale. The board of university and school lands shall also publish notices of all sales for the same length of time in one newspaper published at the seat of government. § 18, c. 118, 1893.

§ 186. Manner of sale. On the day and hour appointed for such sale the commissioner, except as hereinafter provided, shall proceed to sell or offer for sale at public auction to the highest bidder, at the court house or at the place where the terms of the district court are held, of the county where the lands are situated, the lands so advertised, offering them for sale and selling in the order in which they occur in the advertisement for sale. Such lands as have not been specially subdivided shall be offered in tracts of one-quarter section, according to the subdivisions thereof by the United States survey, and those so subdivided in the smallest divisions thereof. No tract shall be sold for less than its appraised value, and in no case for less than ten dollars an acre. Whenever the commissioner cannot attend the sale in person such sale may be made by the deputy land commissioner or any other person designated and authorized by the board of university and school lands. § 19, c. 118, 1893.

§ 187. Terms of sale. Each tract of land shall be sold upon the following terms: the purchaser shall pay one-fifth of the price in cash at the time of sale, and the remaining four-fifths as follows: one-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at six per cent per annum on all the unpaid principal, annually in advance. The highest bidder for any offered tract shall be declared the purchaser thereof, and shall immediately pay over to the county treasurer the amount of one-fifth of the purchase price as specified in the terms of sale. In case the purchaser fails to pay the amount so required to be paid at the time of such sale, such commissioner or whoever may be conducting the sale, shall immediately re-offer such lands for sale, but no bids shall be received from the person so failing to pay as § 20, c. 118, 1893.

aforesaid; and the person refusing or neglecting to make such payment shall forfeit the sum of one hundred dollars for each tract so purchased by him.

§ 21, c. 118, 1893.

§ 188. Adjournment of sale. No adjournment of the sale can be made after its opening, except as provided in section 184 of this article, but, when the interest of the state will be subserved thereby, the board of university and school lands may, at any time not less than two weeks preceding the dates fixed for opening such sale, make an order postponing the same to such date as may be fixed in such order, which shall not be more than sixty days, giving due notice of the same to the county auditor, who shall publish such notice of adjournment and the day fixed for the same, for two successive weeks in the same papers in which the notice of sale is published; but the adjournment of any sale shall not require continued publication of the list of lands beyond the time specified in this article for such publication.

§ 22, c. 118, 1893.

§ 189. Withdrawal of lands from sale. The board of university and school lands may, in its discretion, on or before the day of sale, withdraw any or all lands that may have been advertised for sale or included in any list to be offered in any county, and upon such withdrawal shall notify the auditor of such county, specifying the lands included in such notice of withdrawal, who shall thereupon strike such lands from the lists in his office, and public notice of withdrawal shall be given at the day of sale before any such lands are offered.

§ 23, c. 118, 1893.

§ 190. County auditor to act as clerk at sale. Approval of sale. The county auditor shall act as clerk of all land sales and leases made in his county, and it shall be his duty within five days after such sale or lease shall have been concluded to certify to the board of university and school lands a list of lands sold or leased as provided in this article, with the price thereof and the name of the purchaser or lessee of such tract, the amount for which the lands are sold or leased, the amount of money paid by such purchaser, and the amount of principal remaining unpaid, and the board of university and school lands shall approve and confirm the sale or lease of every such tract, as upon examination of such certified lists and such further information and investigation as shall be deemed necessary, shall be found to have been sold or leased in accordance with the law and without fraud or collusion. For the services imposed by this article the county auditor shall be allowed the sum of three dollars per day for each and every day so engaged, to be paid out of any appropriation for the expenses of appraisal and sale of public lands.

§ 24, c. 118, 1893.

§ 191. Notice to purchaser. Execution of contract. Immediately upon approval of the sales by the board of university and school lands, the secretary of such board shall prepare and certify a list of said approved sales to the commissioner, who shall without delay execute duplicate contracts in the form prescribed by the board, and forward the same to the county auditor of the county where the land was sold, whereupon it is made the duty of the county auditor to notify each purchaser in writing of the approval of the sale to him, and to appear within ten days after the date of such notice and pay the county treasurer the amount of interest on the deferred payments as specified in the contract and execute the contracts of sale, and a failure so to appear and execute such contract shall act as a forfeiture of the payment made by the purchaser at the sale. When the

contracts are properly executed by the purchaser and the amount of money due thereon shall have been paid to the county treasurer the copy marked duplicate shall be delivered to him and the original returned to the land commissioner, and each contract so returned fully executed shall have on its face in the place noted for such purpose the notation of the date of delivery to the purchaser, and all contracts not executed by the purchaser shall be returned to the land commissioner with a written statement thereon of the reason for such return.

§ 192. Sales, when void. Any sale made by mistake, or not in accordance with law, or obtained by fraud, shall be void, and the contract of purchase issued thereon shall be of no effect; but the holder of such contract shall be required to surrender the same to the board of university and school lands, who shall, except in case of fraud on the part of the purchaser, cause the money to be refunded to the holder thereof. § 25, c. 118, 1893.

§ 193. Surveys to be made when necessary. Whenever it appears to the board of university and school lands necessary in order to ascertain the true boundaries of any tracts or portions of lands, or to enable the commissioner to describe or dispose of the same in suitable and convenient lots, it may order all such necessary surveys to be made and the expenses shall be paid out of the state treasury as other incidental expenses of the board of university and school lands are paid. § 26, c. 118, 1893.

§ 194. Subdividing land into small tracts or lots, when to be made. Whenever in the opinion of the board of university and school lands the interests of the state will be promoted by laying off any portion of the land under its control into small parcels or city, town or village lots, the board may order such commissioner to cause the same to be done, and have the same appraised in the same manner as hereinbefore prescribed. § 27, c. 118, 1893.

§ 195. Sale of lots. New appraisal. All parcels or lots so appraised shall be subject to sale in the same manner and upon the same terms and conditions and the contract of purchase shall have the same effect, as in the case of other lands for which provision is made in this article, and at the prices at which the same are severally appraised, until a new appraisal is made, which the board of university and school lands may in its discretion order at any time, in the manner aforesaid, and with the like effect; but no lots or parcels so appraised shall be sold for less than the minimum price of said land, established in this article. § 28, c. 118, 1893.

§ 196. Map to be entered of record. Whenever the commissioner shall lay off any tract of land into small parcels or lots, as provided in this article, he shall cause a correct map of the same to be entered of record in the county where said lands are situated. § 29, c. 118, 1893.

§ 197. Contracts of purchase. Rights under. Contracts of purchase, issued pursuant to the provisions of law, entitle the purchaser, his heirs or assigns, to the possession of the lands therein described, to maintain actions for injuries done to the same, or any action or proceeding to recover possession thereof, unless such contract has become void by forfeiture; and all contracts of purchase in force may be recorded in the same manner that deeds of conveyance are authorized to be recorded. § 30, c. 118, 1893.

§ 198. Assignee of purchasers. Each assignee of a bona fide purchaser of any of the lands mentioned in this article is subject to and governed by the provisions of law applicable to the purchaser § 31, c. 118, 1893.

of whom he is assignee; and he shall have the same rights in all respects as an original purchaser of the same class of lands.

§ 32, c. 118, 1893.

§ 199. Contracts may be surrendered and two or more issued, when. Whenever the holder of any contract of purchase of any state or school land shall surrender the same to the commissioner with a request to have the same divided into two or more contracts, it shall be lawful for the commissioner to issue the same; provided, that the proposed subdivision shall be only in the smallest of the regular government or state subdivisions; and, provided, that no new contracts shall issue while there is due and unpaid any interest, principal or taxes on the principal contract of sale, nor in any case where the commissioner shall be of the opinion after an examination of the lands, if necessary, that the security would be impaired and endangered by the proposed division, nor until such proposed change shall have the approval of the board of university and school lands, and for all such new certificates a fee of five dollars for each certificate so issued shall be paid by the applicant, which fee shall be paid into the state treasury and become a part of the expense fund of the board of university and school lands.

§ 33, c. 118, 1893.

§ 200. Contract void on failure to pay principal, interest or taxes. In case the annual interest due on the first day of January in any year shall not be paid within ten days thereafter by the purchaser or by any person claiming under him, the contract shall, from the time of such failure, be void. In case any installment on the purchase price shall not be paid within ten days after the same becomes due by the provisions of contract of sale, the contract, from the time of such failure shall be void. And in case any of the taxes assessed against the lands described in any contract of sale for any year as provided for in this article shall remain unpaid on the second Monday of October of the following year, the contract shall be void. And in all cases where any contract becomes void by reason of failure to make the payments required by the contract and the terms of this section, it shall be the duty of the board of university and school lands to declare such contract of sale void, and notify the holder thereof of such declaration by written notice mailed to his post office address and to send a duplicate copy thereof to the auditor of the county in which such land is situated, and to order the commissioner to take possession of the land described in such contract.

§ 34, c. 118, 1893.
am'd.

§ 201. Redemption before re-sale. In all cases where the rights of a purchaser, his heirs or assigns, become forfeited under the provisions of this article, by failing to pay the amounts required, such purchaser, his heirs or assigns, may, before the re-sale at public auction of the lands described in such contract, pay to the state treasury the amount of interest due and payable on such contract, and all costs which have been incurred in addition thereto, together with interest at the rate of twelve per cent per annum on the interest and costs so due from the date of delinquency to the date of payment, and such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns, and such contract from the time of such payment shall be in full force and effect, as if no forfeiture had occurred; provided, that after the rights of a purchaser, his heirs or assigns shall have become forfeited under the provisions of this article, the board of university and school lands shall have the power, and it is hereby made their duty to provide for the re-sale of said land so forfeited if in their opinion a resale of said land shall be

most advantageous to the state, otherwise the said board shall provide for the leasing of said land from year to year as herein provided, and after a lease of said land shall be made by said board, the lessee, his heirs and assigns, shall be entitled to the full and absolute possession of all of said lands and premises so leased.

§ 202. Fee in state until contract fulfilled. The fee of each parcel of such lands shall be and remain in the state until the patents hereinafter provided for are issued for the same respectively, and no patent shall issue until full payment of all sums and full compliance with all the conditions of the contract of purchase, and in case of non-compliance by the purchaser, his heirs or assigns, with the terms of the contract as aforesaid, or with the provisions of law applicable thereto, any and all persons being or continuing in possession of any such lands after a failure to comply with the terms of the contract as aforesaid, or with such provisions of law, as aforesaid, without a written permission of the commissioner, shall be deemed and held to detain such land forcibly and without right, and to be trespassers thereon. § 35, c. 118, 1893.

§ 203. Recovery of possession. In case any person holds or continues in possession of any of the land mentioned in this article, contrary to the conditions or covenants of any lease or written agreement, he shall be liable to an action of forcible detainer, or any other proper action for the recovery of possession of such lands and damages for detention of the same. § 36, c. 118, 1893.

§ 204. Reconveyance to the United States. In all cases where lands have been erroneously or improperly certified or conveyed to the state of North Dakota for school or other purposes by the United States, the governor of the state is authorized to reconvey or relinquish by the execution, under his hand and the seal of the state, of such conveyances as will be necessary to convey or relinquish the title which the state may have to such lands. § 37, c. 118, 1893.

§ 205. Patents, when to issue. When any land sold under the provisions of this article has been fully paid for, and all terms of the contract of purchase fully complied with, the board of university and school lands shall so certify to the governor, who shall thereupon issue to the purchaser thereof, his heirs or assigns, a patent conveying the title of the state to such land, and the governor shall in like manner issue a patent to any purchaser of the rights, title and interest of the original purchaser, his heirs or assigns, acquired by any execution sale. All such patents shall be signed by the governor and attested by the secretary of state with the great seal of the state of North Dakota, and shall be countersigned by the board of university and school lands with the seal of the secretary of said board. § 38, c. 118, 1893.

§ 206. Patents to be recorded. The registers of deeds of the several counties of this state are authorized to record all patents issued by the governor pursuant to the provisions of this article; and the records thereof shall have the same effect as the record of other conveyances executed according to the laws of this state. § 39, c. 118, 1893.

§ 207. Taxation of lands after sale. Purchaser of tax certificate. The commissioner shall, as soon as possible after a sale of lands, transmit to the auditor of each county, in which any lands mentioned in this article have been sold, a detailed description of each parcel of the land so sold and the names of the purchasers, and the auditor shall extend the same upon his tax duplicate for the purpose of taxation, and the same shall thereupon become subject to § 40, c. 118, 1893.

taxation the same as other lands, and the taxes assessed thereon, collected and enforced in like manner as against other lands; provided, however, that the purchaser at tax sale of any such lands sold for delinquent taxes shall only acquire by virtue of such purchase such rights and interest as belong to the holder and owner of the contract of sale issued by such commissioner under the provisions of this article, and the right to be substituted in the place of such holder and owner of such contract of sale, as the assignee thereof; and upon the production to the proper officer of the tax certificate given upon such tax sale, in case such lands have 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.

§ 41, c. 118, 1893.

§ 208. Payment to county treasurer. Duty of treasurer. The purchaser of any land mentioned in this article, or his assigns, may pay to the county treasurer of the county in which such land lies any amount which may be due from time to time on the contract, either for principal, interest, rents or penalty, and for the amounts so paid the county treasurer shall give to such person a duplicate receipt specifying the amount paid, date of payment, whether for principal, interest or penalty, and the fund to which it is applicable, the number of the contract, the name of the original purchaser of the land, or the assignee thereof, which receipt shall be countersigned by the auditor of said county, and have the same force and effect as if given by the state treasurer. All moneys received by the county treasurer, under the provisions of this article, shall be held at all times subject to the order and direction of the state treasurer for the benefit of the funds to which the moneys respectively belong; and during the months of January, March, June and October of each year, and such other times as he may be requested so to do by the state treasurer, he shall pay into the state treasury all moneys received on account of such funds since the last payment he may have made.

§ 42, c. 118, 1893.

§ 209. Bond of county treasurer. Conditions of. The bond of each county treasurer shall be conditioned for the honest and faithful discharge of all trusts and responsibility imposed by this article, and for the faithful payment of and accounting for all moneys received by him under the provisions of this article to the state treasurer or any other person entitled to receive the same, and the board of university and school lands shall on or before the first day of January, following any election for county officers, certify to the chairman of the board of county commissioners of each county the amount of money liable to come into the hands of the treasurer of the county under the provisions of this article, and the board of county commissioners shall add to the amount of the sum required on his regular official bond to the county double the sum so certified by the board of university and school lands, and the record of the proceedings of such board of county commissioners when fixing the amount of such bond shall specify in two separate items the aggregate amount of the bond so made up, designating one sum as the amount to indemnify the county, and the other to indemnify the state for any losses incurred by reason of failure to comply with the provisions of all laws regulating his duty.

§ 43, c. 118, 1893.

§ 210. Fees to county treasurer. County treasurers shall be entitled to a fee of one-half of one per cent on each dollar collected or received and remitted by them in payment of principal or interest, fines, penalties and damages on state lands, which fee shall be

payable from the general fund of the class of lands on which payment is made to such treasurer, and such fee shall be paid to the county treasurer on vouchers countersigned by the county auditor and approved by the commissioner of university and school lands and such approved vouchers shall be paid out of any appropriation for the expenses of appraisement and sale of such lands.

§ 211. Duty of county auditor. The county auditor shall, at the time he is required by law to return abstracts of settlement to the state auditor, also forward all duplicate receipts of principal, interest or penalty on state lands, with a certified statement of such collections by the county treasurer, specifying the amount of each item; and he shall also make such return at any other time as may be required by the board of university and school lands. § 44, c. 118, 1893.

§ 212. List of lands sold to be furnished county treasurer. On or before the first day of December in each year the commissioner shall cause to be made out and transmitted to county treasurers a statement showing the lands sold in their respective counties, the number of the contracts of purchase, the name of the person to whom each contract was issued, and the amount of both principal and interest due on each on the first day of January, together with such directions, instructions and blanks as shall enable the county treasurers to carry out the provisions of this article. § 45, c. 118, 1893.

§ 213. Township assessors to examine state lands. It shall be the duty of all township and district assessors, whenever required by the commissioner to examine and report on any lands designated to them by him, in the manner and form prescribed by him, and for such examination they shall be paid at the rate of three dollars per day for time actually engaged, upon vouchers approved by the commissioner. § 46, c. 118, 1893.

§ 214. Transfer of records to commissioner. All abstracts and conveyances of title to the state of North Dakota whether the said lands are held for penal, educational, charitable, school or other purposes, shall be, by those in whose charge such conveyances now are or may come, deposited with and remain in the control of the commissioner of university and school lands. § 47, c. 118, 1893.
am'd.

§ 215. Permanent and general funds. The principal accruing from all sales of school, university or other state lands under the control of the board of university and school lands, as provided for in this article, shall become a part of the several permanent funds to which they respectively belong and shall not be reduced by any means whatever. All moneys received as interest, for rents, penalties, permits or from any source other than from the principal of sales shall become a part of the general or current funds to which they respectively belong and shall be distributed as directed by law. § 48, c. 118, 1893.

§ 216. Quantity of lands to be sold. No more than one-fourth of the common school lands of the state shall be sold within the first five years after they become salable under the provisions of section 155 of the constitution, nor more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of such ten years; provided, however, that the coal lands of the state shall not be sold, but may be leased under the provisions of any law governing such leases. The words "coal lands" include lands bearing lignite coal. § 49, c. 118, 1893.

§ 50, c. 118, 1893.

§ 217. Lands subject to lease. All the common school lands and all other public lands of the state that are not of such value as will admit of appraisal at ten dollars or more per acre, at the time of any regular appraisal, may be leased; provided, that no leases can be granted for a period longer than five years, and only for pasturage and meadow purposes, and at a public auction after notice as hereinafter provided; provided, further, that all of such school and public lands now under cultivation may be leased at the discretion and under the control of the board of university and school lands for other than pasturage and meadow purposes until sold. All rents shall be paid annually in advance.

§ 51, c. 118, 1893.
am'd.

§ 218. Appraisal for lease by county board. It shall be the duty of the county board of appraisers, each and every year, if so ordered, to appraise in the same manner as all other lands that are listed for taxation are appraised all the common school and other public lands of the state in their respective districts that may be included in the order, making a return of all such appraisals to the board of university and school lands in the form prescribed on blanks furnished by the board; such returns to be made on or before the first day of July of the same year; and for any services performed as required by this article they shall be paid at the rate of three dollars per day, to be paid by the state treasurer out of the funds appropriated for the current expenses of such board. It shall be the duty of the board of university and school lands to equalize the appraisements so returned as to counties by adding thereto or taking therefrom such a uniform percentage as may in its judgment seem proper and fair in order to arrive at a just and equitable equalization between the several counties, and upon such valuation so fixed the board of university and school lands are authorized to fix a per cent per acre as the minimum price at which the land can be leased; provided, that the lowest price of lands leased for pasturage cannot be below one-half of one per cent of the average value in the county, and for any cultivated lands in the county the lowest price cannot be below two and one-half per cent of the appraised value of each cultivated tract. And when advertising the same for lease they shall set opposite each description the value thereof as equalized by them, which valuation shall form the basis for leasing the same.

§ 52, c. 118, 1893.

§ 219. Selection of lands for lease. The board of university and school lands shall have the power, and it is hereby made their duty to select from the lands so appraised such tracts as in the judgment of the board can be leased with profit to the school and other permanent land funds of the state, or as the legislative assembly may by law order to be leased, and shall on or before the first day of March in each succeeding year advertise for lease and offer for lease such lands as have thus been selected.

§ 53, c. 118, 1893.

§ 220. Advertisement for leasing. All such lands to be leased or offered for lease lying within the respective counties shall by the board of university and school lands be advertised for lease by publication once a week for not less than sixty days in some newspaper of general circulation in the vicinity of such lands. Such advertisement shall contain the designation or proper description of each tract or parcel of land so to be leased, the appraised value of each tract and the per cent on such valuation fixed by the board as the minimum price at which such land can be leased and the terms of the lease. A copy of such advertisement shall also be posted in a conspicuous place

at the court house of the county, and a notice of the time and place where the said lands are to be leased shall also be published for not less than sixty days in one newspaper at the seat of government by such board of university and school lands; provided, that if in the opinion of the board there will not be sufficient of such lands situate in any county leased to pay the expenses of advertisement in a newspaper, the notice may be given by posting as aforesaid.

§ 221. Manner of leasing. By whom made. How conducted. It shall be the duty of the commissioner of university and school lands, or such other person as may be appointed by the board of university and school lands, to conduct the leasing of such lands in accordance with the provisions of this article and such directions as shall be prescribed therefor by the board; provided, that the leasing shall be at public auction to the highest bidder at the court house or place where terms of the district court are held, commencing on the day specified in the advertisement for such lease and between the hours of ten o'clock A. M. and five o'clock P. M. to continue from day to day until all tracts or parcels of land advertised for lease shall have been leased or offered for lease; but the time for leasing the same shall not exceed ten days in any county, except that an adjournment may be made over the Sabbath or any legal holiday. In counties where a large number of tracts of land are to be leased the land situated in certain townships may be designated in the advertisement to be leased on certain specified days and in such case such lands shall be leased or offered for lease on such specified days, or for want of time for the leasing or offering for lease of all such designated lands, the leasing of those unoffered may be adjourned until the following day or days, when they must be the first lands offered for lease. Such lands as shall not have been specially subdivided shall be leased or offered for lease in tracts of one-quarter section each, and those so subdivided in the smallest subdivision thereof. Notice must be given when the land is offered that all bids are subject to approval by the board. At the time of offering the lands for lease the county auditor of the county shall act as clerk, and it shall be his duty to make report thereof, stating the terms of such leasing, as is prescribed in section 190 for making reports of sales.

§ 54, c. 118, 1893.

§ 222. Deposit by bidders. Forfeit on failure to pay. In offering any tract or parcel of land no bid shall be entertained until the bidder therefor shall deposit fifty per cent of the minimum price fixed in the advertisement, which deposit, should he be the successful bidder, shall be applied as part payment on the lands so leased by him, but should he fail to pay the balance required on his bid he shall forfeit the money so deposited. Deposits by all unsuccessful bidders shall be returned to them. All competitive bids shall be on the basis of so many dollars premium over and above the minimum price at which the tract is offered. The annual rent in all cases of lease shall be payable in advance as hereinafter provided.

§ 55, c. 118, 1893.

§ 223. Adjournment of lease. Whenever the board of university and school lands finds that the interests of the state will be subserved by the adjournment of the time for offering lands for lease, the authority conferred by section 188 for adjournment of sales is made applicable to the leasing of lands.

§ 56, c. 118, 1893.

§ 224. Approval of lease and execution of contract. Immediately upon the receipt of the report of the county auditor as required by this article the board of university and school lands

§ 57, c. 118, 1893.

shall approve and confirm the lease of all such tracts as in their judgment should be made, and shall at once certify a list of the approved leases to the commissioner who shall without delay execute duplicate contracts of lease in the form prescribed by the board and forward the same to the county auditor of the respective counties where the land was leased, who shall notify each lessee in writing to appear within ten days after date of notification and pay the county treasurer the amount of money required to complete the contract, and execute such contract of lease; and a failure to appear and execute the contract shall forfeit the deposit made at time of the bid. When the contract is properly executed by the lessee and the amount of money due thereon shall have been paid to the county treasurer, the copy marked "duplicate" shall be delivered to him and the original thereof shall be returned to the commissioner, and each contract fully executed and so returned, shall have on its face in the place noted for such purpose the notation of the date of delivery to the lessee, and all contracts not executed by the lessee shall be returned to the commissioner with a written statement thereon of the reason that they are not executed.

§ 59, c. 118, 1893. **§ 225. Lessee not to destroy timber.** No lessee of any of the common school or public lands of the state, or his heirs or assigns, shall cut down or take away from such tract any timber, trees or wood, or suffer or cause the same to be done by any person, except that such lessee may cut down or use such amount of dead, or prostrate trees, or timber as may be sufficient to supply him with fuel for his family or the families of his employees actually residing upon such tract. Any lessee violating the provisions of this section shall forfeit his lease and all rights and interests thereunder, and shall be liable to the state for damages sustained by the state by reason thereof, and shall be guilty of a misdemeanor.

§ 60, c. 118, 1893. **§ 226. Lessee not to break uncultivated land.** No lessee, or the heirs or assigns of any lessee, of any of the common school or public lands of this state, leased for meadow or pasturage purposes, or of school or public lands leased for the purpose of cultivation, which may contain any uncultivated or unbroken land, shall break, plow or cultivate any unbroken land on any tract so leased, or cause or suffer it to be done by any other person. And any lessee, or his heirs or assigns, who shall violate the provisions of this section shall incur the same forfeitures and liabilities as are provided in the preceding section, and shall also be guilty of a misdemeanor.

§ 61, c. 118, 1893. **§ 227. Hay not to be cut before July 10th.** No lessee, or his heirs or assigns, shall mow or cut for hay or feed any grass on any unbroken land, or cause or suffer the same to be done by any other person prior to the tenth day of July in any year. And any lessee, or his heirs or assigns, who shall violate the provisions of this section shall incur the same forfeitures and liabilities as are provided in section 225 and shall also be guilty of a misdemeanor.

§ 62, c. 118, 1893. **§ 228. Board may grant permits to cut hay, remove timber, etc.** The board shall have authority, when in its judgment it is for the best interests of the state so to do, to sell the right to cut grass on any of the public lands of the state and to sell any fallen and dead timber on such lands for such price and on such terms and conditions as it may think proper; provided, that all such permits shall be only for the current season and between the fifteenth day of June and the first day of April of the following year, and that the control

or rights of occupancy of such lands shall be only such as is specified in such permit, and the board of university and school lands may appoint as local agents to carry out the provisions of this section the chairman of the board of township supervisors in organized townships, the commissioner of any district where the townships are not organized, or any other suitable person who is a resident of the township where the public lands are situated, who upon accepting such appointment and before entering upon his duties as such agent shall take and subscribe an oath or affirmation justly and impartially to perform the duties of his office to the best of his ability, which oath shall be recorded in the office of the secretary of state and filed in the office of the board of university and school lands. The duties of such agent shall be prescribed by the commissioner, to be approved by the board of university and school lands, and compensation for his service shall be fixed by the board, based upon a percentage of the amounts of money collected and remitted to the state treasurer from the sale of grass and timber in his township or district.

§ 229. Trespass upon public lands. Civil action for. § 63, c. 118, 1893.
Whoever commits any trespass upon any of the lands owned, or held in trust, or otherwise by the state shall be liable in treble damages in an action to be brought in the name of the state, if such trespass is adjudged to have been willful; but single damages only shall be recovered in such action if such trespass is adjudged to have been casual and involuntary.

§ 230. Willful trespass. Penalty. § 64, c. 118, 1893.
Whoever commits any willful trespass upon any of the lands owned or held in trust or otherwise by this state, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing or cutting or removing any hay or grass standing or growing or being thereon, or who injures or removes any buildings, fences, improvements or other property belonging or appertaining to said land or unlawfully breaks or cultivates any of said lands or aids, directs or countenances such trespass or other injury shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, in the discretion of the court. And whoever is occupying, residing upon or in possession of any school or other public lands owned or held in trust or otherwise by the state at the time of the passage, approval and taking effect of this act without a valid lease therefor shall be deemed and held to be a willful trespasser thereon, and guilty of trespass upon such land, and upon conviction thereof shall be punished as provided for in this section for any other act of trespass.

§ 231. Property to be seized. § 65, c. 118, 1893.
In addition to the penalties provided for in this article against those committing trespass upon any of the lands owned or held in trust or otherwise by this state, the commissioner is authorized and empowered without legal process to seize and take, or cause to be seized and taken any and all timber, grass, wood or other property unlawfully severed from such lands, whether the same has been removed from such lands or not, and may dispose of the property so seized and taken, either at public or private sale, in such manner as will be most conducive to the interests of the state; and all moneys arising therefrom after deducting the reasonable and necessary expenses of such seizure and sale shall be made a part

of the general fund belonging to the public lands and shall be distributed in accordance with the provisions of this article.

§ 67, c. 118, 1893. **§ 232. Damages.** All damages recovered for any trespass, or other injury upon or to any of the lands mentioned in this article, shall be paid over to the state treasurer for the benefit of the general fund to which the same properly belongs.

§ 68, c. 118, 1893. **§ 233. State's attorney to prosecute and report.** The state's attorneys of the several counties shall promptly report to the commissioner all cases of trespass committed upon such lands, which may come to their knowledge, and shall, when directed by the attorney general, prosecute all actions for any trespass or injury thereto, or for recovery of possession thereof, or otherwise.

§ 70, c. 118, 1893. **§ 234. Expenses of sale and lease, how paid.** The expenses of publishing notices of the leasing and sale of the university, school and all other public lands of the state shall be paid by the state treasurer upon the warrant of the state auditor out of the general or current funds of the different institutions as designated in section 215, and such expenses shall be apportioned according to the receipts credited each fund from proceeds of each and every sale or lease. All bills for such publishing shall be verified by the publisher and approved by the board of university and school lands.

§ 71, c. 118, 1893.
§ 1, c. 112, 1895. **§ 235. Appropriation for expenses of board.** There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated the sum of five thousand dollars, or so much thereof as may be found necessary, for the salaries and expenses of the commissioner of university and school lands, clerk hire, record books, blanks and all such other expenses as shall be necessarily incurred by the board of university and school lands in carrying out the provisions of this article, and such expenses shall be paid out of the treasury, and upon satisfactory vouchers therefor the state auditor shall issue his warrant for the same.

ARTICLE 4.—THE STATE BOARD OF AUDITORS.

§ 1, c. 48, 1893. **§ 236. Membership of board.** There is hereby created a board of auditors for the state of North Dakota, which shall consist of the secretary of state, the state auditor and the attorney general, whose duty it shall be to examine and audit the accounts, books and vouchers of the state treasurer, and to take an account and ascertain the amount of funds in the state treasury or belonging to the state at least twice in each year without previous notice to the treasurer, and make report thereof and of their acts and doings in the premises to the governor, and also to witness and attest the transfer and delivery of accounts, books, vouchers and funds by any outgoing treasurer to his successor in office, and report the same to the governor.

§ 2, c. 48, 1893.
am'd. **§ 237. State depositories.** All the funds of the state shall be deposited by the treasurer in one or more designated national or state banks in the state on or before the first day of each month in the name of the state; such bank or banks shall be designated by the board of auditors in conjunction with the governor after advertising in one or more newspapers published in the state for at least thirty days for proposals and receiving proposals, stating what security will be given to the state for any state funds deposited and what interest paid on monthly balances of such funds on condition that such funds with accrued interest shall be held subject to draft and payment at all times on demand; provided, that the amount deposited in any

bank shall not exceed the assessed value of its capital stock. Interest on the funds so deposited shall be at the rate of not less than three nor more than four per cent per annum.

§ 238. **Bond to be furnished.** Before any bank shall be designated as such depository it shall deposit with the state treasurer a bond payable to the state and executed by not less than seven freeholders of the state as sureties, which bond shall be approved by the governor and the state board of auditors, and shall be in such an amount as such board shall direct, not less than double the amount of funds to be deposited in such bank at any one time. § 3, c. 48, 1893.

§ 239. **Treasurer exempt from liability.** Whenever any portion of the funds of the state is deposited in any national or state banks in the manner above provided the state treasurer and the sureties on his bond shall be exempt from all liability by reason of the loss of any such deposited funds from failure, bankruptcy or any other act of such bank to the extent and amount of such funds in the hands of such bank at the time of such failure or bankruptcy. § 4, c. 48, 1893.

ARTICLE 5.—BOARDS OF HEALTH.

STATE BOARD OF HEALTH.

§ 240. **Board, how composed. Officers of.** There is hereby established a state board of health, composed of a president, vice president and superintendent of public health. The attorney general shall be president of such board. The governor shall appoint some suitable person, a resident of this state, vice president, and he shall also appoint by and with the advice and consent of the senate a superintendent of public health, who shall be learned in medicine, a graduate of some reputable medical college authorized by law to grant diplomas and hold a license to practice medicine and surgery within the state, and be a resident of this state. The several persons thus appointed shall hold their offices for two years from the first Tuesday in April succeeding their appointment and until their successors are elected and qualified. § 1, c. 22, 1889. am'd.

§ 241. **Duties of officers.** The president of the board shall preside at the meetings thereof, and the vice president shall perform the duties thereof in his absence. The superintendent of public health shall be secretary of said board. He shall keep a record of all the proceedings of the state board of health, and of his own acts as such superintendent, and he shall perform such other duties as are prescribed by this article, or which may be prescribed by the state board of health. The records kept by the superintendent shall be at all times open to the inspection of the public. § 2, c. 63, 1885.

§ 242. **Meetings of the board.** The several persons composing the state board of health shall meet as often as once in every six months at such place in the state as they may appoint. § 3, c. 63, 1885.

§ 243. **Powers and duties of board.** The board shall have power and it shall be its duty: § 4, c. 63, 1885.

1. To fix the time and the place of the meetings of the board, subject to the provisions of the last section.

2. To make rules and regulations for the government of the board, its officers and its meetings.

3. To make and enforce all needful rules and regulations for the prevention and cure, and to prevent the spread of any contagious, infectious or malarial diseases among persons and domestic animals.

4. To establish quarantine, and isolate any person affected with contagious or infectious disease.

5. To isolate, kill or remove any animal affected with contagious or infectious disease.

6. To remove or cause to be removed any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the health of persons or domestic animals.

7. To condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale.

8. To superintend the several boards of health in cities, villages and towns and the county boards of health of the several counties.

9. To empower and direct the superintendent of public health to do or cause to be done any or all of the things mentioned in subdivisions four, five, six, seven and eight of this section.

§ 6, c. 63, 1885.

§ 244. Compensation of officers. The president and vice president of the board shall receive no compensation for the performance of their official duties, but they shall be paid five cents for every mile actually and necessarily traveled and such other necessary expenses as they may pay or incur in attending the meeting of the board, or in the performance of their duties as such officers.

COUNTY BOARD OF HEALTH.

§ 7, c. 63, 1885.
§ 1, c. 26, 1890.

§ 245. Board, how composed. There is hereby established a county board of health, composed of a president, vice president and superintendent. The state's attorney in each county shall be president of the county board. The board of county commissioners shall appoint some suitable person, who is a resident of the county, vice president; and it shall also appoint a superintendent of public health for the county, who shall be learned in medicine and hold a license to practice medicine and surgery within the state, and the several persons thus appointed shall hold their offices for two years and until their successors are elected and qualified.

§ 8, c. 63, 1885.

§ 246. Duties of officers of county board. The president of each county board of health shall preside at the meetings thereof and in his absence the vice president shall perform the duties of president. The county superintendent of health shall be secretary of the board of health of his county. The county superintendent of health shall keep a record of all the proceedings of the board and of his official acts, and he shall at the end of every month make a full report in writing to the superintendent of public health of the proceedings of the county board of health and of his official acts, and shall, whenever the health of persons or domestic animals is endangered, or when any contagious or infectious disease occurs in his county, either among persons or domestic animals, immediately report the same to the superintendent of public health.

§ 9, c. 63, 1885.

§ 247. Meetings of county board of health. The several county boards of health shall meet at the county seat in their respective counties at such time within thirty days after the appointment of the county superintendent of health as he may designate. Notice of the time and place of such meeting shall be by him given to the other members of the county board at least five days prior to such meeting, and thereafter the board shall meet at the county seat as often as once in every three months.

§ 10, c. 63, 1885.

§ 248. Powers and duties of county board of health. The several county boards of health shall have power within their

respective counties, outside of the corporate limits of cities having a city board of health, subject to the supervisory control of the state board of health, and the superintendent of public health, to do and perform all the things mentioned in subdivisions three, four, five, six, seven and eight of section 243. All expenses actually and necessarily paid or incurred by the county board of health in carrying out the provisions of this article shall be audited by the board and certified to the county commissioners and shall be paid the same as other county expenses are paid.

§ 249. Powers and duties of superintendent. The county superintendent 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 and the superintendent of public health, all the matters and things mentioned in subdivisions four, five, six and seven of section 243 within his county, and in case of immediate danger to the health of persons or of domestic animals he may act, as in his judgment he deems best, without consultation with the other members of the board for the prevention of such danger, and shall immediately report such action to the president of the board and to the superintendent of public health. § 11, c. 63, 1885.

§ 250. Compensation. The president and vice president of the board shall receive no compensation for the performance of their official duties; but shall receive five cents for every mile actually and necessarily traveled in the discharge of such duties. The county superintendent of health shall receive five dollars per day for every day in which he may be actually and necessarily engaged and five cents per mile for each mile actually and necessarily traveled in the performance of his duties, and he shall also receive such other sum 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 article, or by the county board of health, all of which accounts for services, mileage and other expenses shall be audited by the board and certified to the board of county commissioners and paid as other county expenses are paid. § 12, c. 63, 1885.

§ 251. Reports. The superintendent of public health shall on the first day of December of each even numbered year make a full report to the governor, which report shall show all that has been done by the state board of health and by such superintendent during the two years preceding the making of such report, the number of cases treated by him and in each county by the county superintendent, the character and extent during such time of all contagious or infectious diseases that have been reported to him, all expenditures by the state board, and in each of the organized counties by the county board and such recommendations as he may deem advisable for the better protection of the public health and the prevention and cure of contagious or infectious diseases of persons and of domestic animals. § 13, c. 63, 1885.
am'd.

§ 252. Vacancies. In case a vacancy shall occur in the office of vice president or superintendent, such vacancy shall be filled by appointment by the governor, and the person so appointed shall hold the office for the unexpired term. In case a vacancy occurs in the office of vice president or superintendent of health in any county board of health, the superintendent of public health shall appoint some suitable person to fill such vacancy, and the person so appointed shall hold such office until the next meeting of the state board of § 15, c. 63, 1885.

health and until a successor to such officer has been appointed by the state board.

§ 16, c. 63, 1885. **§ 253. Boards of health heretofore established, not affected.** Nothing contained in this article shall in any manner affect any board of health heretofore established or that may be hereafter established in any city, village or incorporated town; provided, however, that all such boards of health shall be under the superintending control of the state board.

CITY BOARD OF HEALTH.

§ 1, c. 34, 1898. **§ 254. City board, how constituted.** There is hereby established in each incorporated city in this state a board of health, which shall be constituted as follows: the mayor of such city shall at the first meeting of the city council in April in each year appoint four aldermen, who, together with the city engineer and the health officer as hereinafter provided, shall constitute a board of health and shall have and exercise the powers conferred upon such board by law and by the ordinances of such city.

§ 2, c. 34, 1898. **§ 255. Health officer. Duties. Salary.** At the first meeting of the city council in April of each odd numbered year there shall be appointed by the mayor and confirmed by the council one health officer, who shall hold his office for two years and until his successor is appointed and qualified. He shall be a competent physician in regular practice and shall perform such duties as may be devolved upon him by law or by the ordinances of such city. Before entering upon the duties of his office he shall take the usual oath of office and give a bond, to be approved by the city council, in the sum of one thousand dollars, conditioned for the faithful performance of his duties, and shall receive such compensation as the city council may determine.

§ 1, c. 90, 1893, am'd. **§ 256. Local boards of health. Duties of.** Each city board of health shall perform the duties and exercise the powers herein provided within the limits of the city for which it is established. Each county board of health and city board of health shall be known as the local board of health.

§ 2, c. 90, 1893. **§ 257. Board to make sanitary regulations.** Each local board of health, within its jurisdiction, may examine into all nuisances, sources of filth and causes of sickness, and make such regulations regarding the same as it may judge necessary for the public health and safety of the inhabitants, and every person who shall violate any published order or regulation made by any board of health, shall be guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both.

§ 3, c. 90, 1893. **§ 258. Regulations published.** Notice shall be given by each local board of health of all general orders and regulations made by them by publishing the same in some newspaper, if there is one published within the jurisdiction of such board; if there is none, then by posting such orders and regulations in five public places therein, and such publication of such orders and regulations shall be deemed a legal notice to all persons.

§ 1, c. 90, 1893. **§ 259. Nuisance. Owner to remove.** Whenever any nuisance, source of filth or cause of sickness is found on private property any member of the local board of health may order the owner or occupant thereof at his own expense to remove the same within

twenty-four hours, and such order may be given to such owner or occupant personally or left at his usual place of abode.

§ 260. Board to act in default of owner. Whenever such owner or occupant shall fail to comply with the order of such board, it may cause such nuisance, source of filth or cause of sickness to be removed and all expenses incurred thereby shall be paid by such owner or occupant, or by such other person as has caused or permitted the same. § 5, c. 90, 1898.

§ 261. Complaint to justice, when. Whenever any local board shall deem it necessary for the preservation of the health of the inhabitants within its jurisdiction to enter any building or vessel within such jurisdiction for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness and shall be refused entrance, any member of the board may make complaint under oath to a justice of the peace within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. § 6, c. 90, 1893.

§ 262. Justice to issue warrant. Such justice shall thereupon issue a warrant directed to the sheriff or other peace officer, commanding him to take sufficient aid and accompanied by at least one member of the board of health between the hours of sunrise and sunset to have such nuisance, source of filth or cause of sickness destroyed, removed or prevented under the direction of such of the board of health as accompany him. § 7, c. 90, 1893. am'd.

§ 263. Any physician to report cases of contagion. Whenever it shall come to the knowledge of any physician or other person that a contagious, epidemic or infectious disease exists within the jurisdiction of any local board, he shall immediately report to such board in writing the name and place of residence, if known, of every person afflicted with such disease, and if he is the attending physician of such person he shall report not less than twice in each week the condition of each person so afflicted and the state of such disease. § 8, c. 90, 1893.

§ 264. Duty of physician in case of death. It shall be the duty of each practicing physician in this state to report in writing to the local board of health the death of each of his patients, who shall have died within the jurisdiction of such board of any contagious, infectious or epidemic disease. Such report shall be made within twenty-four hours after such death and shall state the specific name and character of such disease. § 9, c. 90, 1893.

§ 265. Keeper of house to report. Each keeper of any private house, boarding house, lodging house, inn or hotel shall report in writing to the local board of health within whose jurisdiction the same may occur each case of contagious, infectious or epidemic disease which may occur in his house, inn or hotel; such report shall be made within twenty-four hours after the existence of such disease shall become known to such person, and shall state the name of each person afflicted with such disease and the nature thereof. § 10, c. 90, 1893.

§ 266. Removal of sick person. No person shall without a permit from the local or state board of health carry or cause to be removed from without this state to this state, or from one building to another within this state, or from or to any car or vessel, any person afflicted with any contagious, infectious or epidemic disease, or the body of any person who died of such disease. § 12, c. 90, 1893. am'd.

§ 13, c. 90, 1893.
am'd.

§ 267. Vaccination required, when. Each parent or guardian having the care, custody or control of any minor or other person shall cause such minor or other person to be vaccinated.

§ 14, c. 90, 1893.
am'd.

§ 268. Duty of school officials. No principal, superintendent or teacher of any school, and no parent or guardian of any minor child, shall permit any child having scarlet fever, diphtheria, smallpox, whooping-cough, measles or any other dangerous, infectious or contagious disease, or any child residing in any house in which any such disease exists or has recently existed to attend any public or private school until the local board of health shall have given permission therefor.

§ 15, c. 90, 1893.
am'd.

§ 269. Burial, case of contagion, regulations. No person shall allow to be unburied the body of any human being for a longer time than four days, or, when death has been caused by an infectious or contagious disease, for a longer time than twenty-four hours after the death of such person without a permit from the local board of health, which permit shall specify the length of time during which such body may be unburied. In all cases where death has been caused by an infectious or contagious disease, the body shall, if directed by said board, be immediately disinfected as may be directed by it. If the body remains unburied for more than twenty-four hours it shall immediately be inclosed in a tightly sealed metallic coffin which shall not thereafter be opened and the funeral of such person shall be strictly private. In the removal of such body for burial, or otherwise, only such hearses or other vehicles shall be employed as may be authorized by said board, and no undertaker or other person shall bury or prepare for burial the body of any human being without a certificate signed by the attending physician or by the coroner, which certificate shall state the name, age, sex and place of abode and date of death of such deceased person, the name and duration of the disease of which such person died and whether or not such disease is contagious, and such certificate shall after the burial of such body be filed with the local board of health, and whenever any such dead body shall be presented to any common carrier within the state for transportation by such carrier, it shall be accompanied by a duplicate of such certificate signed by such attending physician or coroner; and no common carrier shall receive any such body for transportation unless such certificate shall state that the disease of which such person died is not contagious, which duplicate shall be securely attached to and remain upon the outside of the coffin or other receptacle containing such dead body.

§ 16, c. 90, 1893.
am'd.

§ 270. Infected persons. Removal of. It shall be the duty of each local board of health, whenever it shall come to its knowledge that a case of smallpox, scarlet fever, diphtheria or other infectious or contagious disease exists within its jurisdiction, immediately to examine into the facts of the case and, if such disease appears to be of the character herein specified, such board shall adopt such quarantine and sanitary measures as in its judgment tend to prevent the spread of such disease, and may immediately cause any person infected with such disease to be removed to a separate house, if in the opinion of the health officer or superintendent of public health, such person can be so removed without danger to his health and, if such infected person cannot be removed without danger to his health, the local board shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and

in such cases may cause the persons in the neighborhood to be removed and take such other measures as it deems necessary for the safety of the inhabitants, and shall immediately notify the state board of health of the existence and nature of such disease and of the measures adopted by it with reference thereto.

§ 271. Temporary hospital. Each local board of health may provide such temporary hospital or place of reception for persons afflicted with infectious or contagious diseases as it judges best for their accommodation and the safety of the inhabitants, and all such hospitals and all private houses or other places in which exists any infectious or contagious disease shall during the existence of such disease be under the control and subject to the regulations of the local board of health and all the inmates of such house or other place during the existence of such disease therein must conform to the regulations and obey the instructions of such local board with reference thereto. § 17, c. 90, 1893.

§ 272. Infected clothing, etc. Destruction of. Any local board of health may cause to be destroyed any bed or bedding, clothing, carpets or other articles which have been exposed to infection from such infectious or contagious disease and may allow reasonable compensation for the same, or may provide a proper place with all necessary apparatus and attendants for the disinfection of such articles and cause all such articles to be disinfected thereby, and may provide a carriage for the conveyance of such articles or of persons suffering from such contagious or infectious disease. § 18, c. 90, 1893.

§ 273. Board has full power. Expenses. Local boards of health may employ such persons as may be necessary to carry into effect the provisions of this article and the regulations established by them, and such physicians as they deem necessary and provide such necessaries of life as in their judgment shall be needed for the maintenance, welfare and comfort of persons afflicted with contagious and infectious diseases. All expenses incurred by any local board of health in carrying into effect the provisions of this article and in providing for the care and maintenance of such sick persons and all expenses incurred under any of the provisions of this article shall be audited and allowed by the board incurring the same; such expenses, in case of city boards of health, shall be certified to the city auditor and paid out of the general fund of the city and, in case of county boards of health, shall be certified to the county auditor and paid out of the general fund of the county; all expenses incurred by such boards of health for the care, medical attendance or support of any such sick person shall be a charge upon such person and upon the person legally chargeable with the support of such person, and may be collected by suit in the name of the county or city, which shall have incurred such expense; provided, that, if a physician is called at the instance of such local board of health to attend a person infected with a contagious or infectious disease, it shall be at the expense of such city or county. § 19, c. 90, 1893.

§ 274. Neglect of duty herein. Penalty. Any health officer, superintendent of public health or any member of any local board of health, who shall neglect or refuse to perform any of the duties required to be performed by him under the provisions of this article, and any person, who fails to comply with, or violates any of the provisions of this article, or neglects or refuses to conform to any rules, regulations or measures adopted by the local board of health § 20, c. 90, 1893. am'd.

within whose jurisdiction he shall at the time be and which shall have been published or shall have come to his knowledge, or refuses or neglects promptly to obey any orders, directions or instructions given to him by such board of health, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both.

ARTICLE 6. — STATE BOARD OF MEDICAL EXAMINERS.

§ 1, c. 93, 1890.
am'd.

§ 275. Board of medical examiners. How appointed. Qualifications. The governor shall appoint a state board of medical examiners consisting of nine members, of whom eight shall be practicing physicians, graduates of reputable medical colleges, who shall hold their office for three years after such appointment and until their successors are appointed and qualified. Two members of such board shall be homeopathic physicians and one a lawyer.

§ 2, c. 93, 1890.
am'd.

§ 276. Officers. Meetings for examinations. Record of licenses. Such board shall elect a president and treasurer, and shall have a seal. The president and secretary shall have power to administer oaths. The board shall hold meetings for examinations at such place as it may designate on the first Tuesday in January, April, July and October of each year, and such special meetings as it may from time to time appoint. The board shall keep a record of all its proceedings, and also a register of applicants for license together with their ages, time spent in the study of medicine and the name and location of all institutions granting to such applicants degrees or certificates of attendance on lectures in medicine or surgery. Such register shall also show whether the applicant was rejected or licensed under this article. Said books and register shall be prima facie evidence of all matters therein recorded.

§ 3, c. 93, 1890.
am'd.

§ 277. Examinations, how conducted. Licenses, when revocable. All persons before commencing the practice of medicine, surgery or obstetrics in this state shall apply to the board for a license so to do, and such applicant shall submit to an examination in the following branches: anatomy, physiology, chemistry, histology, materia medica, therapeutics, diseases of women and children, diseases of the nervous system, diseases of the eye and ear, medical jurisprudence and such other branches as the board deems advisable, and present evidence of having attended three courses of lectures of at least six months each; the board shall cause such examination to be practical and scientific and sufficient to test the candidate's fitness to practice medicine, surgery and obstetrics. If such applicant passes the prescribed examination the board shall grant him a license to practice medicine, surgery and obstetrics in this state, which license shall be signed by the president and secretary of the board and attested by the seal thereof. The fee for such examination shall be twenty dollars, to be applied by the board toward paying the expenses thereof. The board may revoke or refuse a license for dishonorable or immoral conduct, chronic or persistent inebriety or for the practice of criminal abortion. In complaints for violating the provisions of this section the accused shall be furnished with a copy of the complaint and given a hearing before the board in person or by attorney.

§ 4, c. 93, 1890.
am'd.

§ 278. Licenses to be filed. The person receiving a license shall file the same or a copy thereof, with the register of deeds of the county where he resides, and the register of deeds shall file the same.

§ 279. Who exempt from provisions of this article. This article shall not apply to surgeons of the United States army or navy, physicians or surgeons in actual consultation from other states or territories or actual medical students practicing medicine under the direct supervision of a preceptor. § 5, c. 93, 1890. am'd.

§ 280. Penalty for practicing without license. Any person violating the provisions of this article is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both. § 6, c. 93, 1890.

§ 281. Certain dead bodies may be used for dissecting. It shall be lawful for any medical association, regular physician and surgeon or the professors of any medical college in this state to receive the body of any person executed pursuant to sentence of law and of all persons dying in the penitentiary or county jails while under sentence of law for crime, to be used within the state for the advancement of anatomical science, preference being given to medical colleges established by law within this state. § 1, c. 92, 1890. am'd.

§ 282. Remains to be interred. Every physician, surgeon or professor before receiving any such body shall give to the officer surrendering the same a sufficient bond conditioned that such body shall be used only for the promotion of anatomical science within this state and so as not to outrage public feeling; and that after having been so used the remains thereof shall be interred in some public cemetery. § 2, c. 92, 1890. am'd.

§ 283. When body not to be used for dissecting. If the deceased during his last illness requested to be buried or, if within thirty-six hours after his death any friend or relative asks to have the body buried, the body shall not be so surrendered, but shall be buried. § 3, c. 92, 1890. am'd.

ARTICLE 7.—STATE BOARD OF PHARMACY.

§ 284. Board of pharmacy, how appointed. Vacancies. The state board of pharmacy shall consist of three members, who shall hold office for three years and until their successors are appointed and qualified. Annually or whenever a vacancy occurs in such board the governor shall, upon the recommendation of the North Dakota pharmaceutical association, appoint some member thereof as a member of the board or to fill a vacancy as the case may be. § 4, c. 108, 1890. am'd.

§ 285. Organization of board. Examinations. Such board shall within thirty days after the appointment and qualification of a new member for the full term, meet and organize by the selection of a president and secretary from its own members, who shall be elected for the term of one year and perform the duties prescribed by the board. It shall be the duty of the board to examine all applications for registration submitted in proper form; to grant certificates of registration to such persons as may be entitled to the same under the provisions of this article; to cause the prosecution of all persons violating its provisions; to report annually to the governor and to the North Dakota pharmaceutical association upon the condition of pharmacy in the state, which report shall also set forth the proceedings of the board for the year, as well as the names of all pharmacists registered. The board shall hold at least two and not more than four meetings each year for the examination of applicants for registration and the transaction of such other business as shall pertain to its § 5, c. 108, 1890. am'd.
§ 2, c. 80, 1893.

duties, and it shall give at least thirty days' public notice of the time and place of such meeting in three pharmaceutical journals of general circulation in the state. The board shall make rules for the proper execution of its duties and shall keep a book of registration, in which shall be entered the names and places of business of all persons registered and the facts on which such registration was granted. Two members of the board shall constitute a quorum. The board shall have power to cancel the certificate of any registered pharmacist for intemperance, incompetency or illegal sale of intoxicating liquors, upon the sworn complaint of three reputable citizens, charging any registered pharmacist with intemperance, incompetency or the illegal sale of intoxicating liquors. The board shall appoint a time and place for hearing such charges and shall give the pharmacist so charged at least ten days notice by mail of the time and place of the hearing, when he shall appear and answer such charges. If the board finds any of such charges to be true, they shall forthwith cancel the certificate of such pharmacist and his registry as a pharmacist.

§ 2, c. 108, 1890.
am'd.

§ 286. Who entitled to registry. To entitle a person to registry he must be a graduate in pharmacy from a college approved by the board or have been engaged for a period of not less than four years in the preparation of physicians' prescriptions.

§ 8, c. 108, 1890.
§ 3, c. 80, 1893.

§ 287. Certificates. Fees. Each applicant for registration shall pay to the secretary the sum of five dollars, before examination, provided, that in case of a failure to pass a satisfactory examination, he may be re-examined at any regular meeting of the board upon payment of a fee of three dollars. Registration as a pharmacist entitles the person registered to membership in the North Dakota pharmaceutical association.

§ 9, c. 108, 1890.
am'd.

§ 288. Registered assistants, qualifications of. Fees. Any assistant in pharmacy over the age of eighteen years, not having the qualifications of a registered pharmacist, who shall have been engaged two years in assisting in the compounding of prescriptions, shall upon furnishing satisfactory evidence thereof to the board and upon payment of a fee of one dollar be entitled to a certificate as a registered assistant. Annually thereafter during the time he shall continue in such duties he shall pay to the secretary the sum of fifty cents for which he shall receive a renewal of such certificate.

§ 10, c. 108, 1890.
§ 4, c. 80, 1893.
am'd.

§ 289. Registration fees. Certificates to be posted. Each registered pharmacist engaged in the practice of his profession shall, annually, during the time he shall continue such practice, on such date as the board of pharmacy shall determine, pay a registration fee, to be fixed by the board, in no case exceeding three dollars, upon which he shall receive a renewal of such registration and of membership in the North Dakota pharmaceutical association. Each certificate of registration and each renewal thereof shall be conspicuously posted at the place of business of the holder.

§ 11, c. 108, 1890.
§ 5, c. 80, 1893.
am'd.

§ 290. Salaries. Board to make reports. The secretary of the state board of pharmacy shall receive a salary which shall be determined by such board; he shall also receive his traveling and other expenses incurred in the performance of his official duty. The other members of such board shall each receive the sum of five dollars for each day actually engaged in its service, and all legitimate and necessary expenses incurred in attending the meetings of the board or in performing other official duties. Such expenses shall be paid only from the moneys received by the board under the provis-

ions of this article, and no part of the salary or other expenses of the board shall be paid out of the state treasury. Any moneys remaining after the payment of the salaries and expenses herein provided for shall be held by the secretary of the board as a special fund for meeting the expenses of the board and of the annual meeting and report of the North Dakota pharmaceutical association and other necessary expenses that may be incurred by such association. The secretary of the board shall give such bonds as the board shall from time to time require. The board shall in its annual report render an account of all moneys received and disbursed by it.

§ 291. Forfeited membership. How renewed. Nothing in this article shall be so construed as to prevent any person, who has once been a member by examination, and who may have forfeited his membership by non-payment of fees, from renewing his registration within two years by paying such fees without examination. § 16, c. 108, 1890.
am'd.

ARTICLE 8.—STATE BOARD OF DENTAL EXAMINERS.

§ 292. Who may practice. License. It shall not be lawful for any person to practice dentistry in this state without having a license so to do from the board of dental examiners. § 1, c. 58, 1890.
am'd.

§ 293. Board. How constituted. The state board of dental examiners, consisting of five members, heretofore created, shall continue to be the state board of dental examiners. Upon the expiration of each member's term of office the governor shall appoint his successor, who shall hold office for five years and until his successor is appointed and qualified. All vacancies in such board shall be filled by appointment by the governor. No person shall be eligible to appointment on such board who is not a practicing dentist in this state. § 2, c. 58, 1890.
am'd.

§ 294. Power to make rules. Officers. Records. Such board shall have power to make reasonable rules and regulations for carrying into effect the provisions of this article. It shall choose one of its members president and one secretary thereof, and shall hold regular meetings twice in each year, and such special meetings as the board may by its rules provide. A majority of the members of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it, and such records together with the list of licensed and registered dentists shall be public records, and shall at all reasonable times be open to public inspection. Such records, or a transcript of the same, or any part thereof, under the seal of the board, duly certified by the secretary thereof, shall be competent evidence of the facts therein stated. A certificate of the secretary under the seal of the board, stating that any person is or is not a registered dentist, shall be prima facie evidence of such fact. The president and secretary of the board shall have authority to administer oaths, and the board shall have power to hear testimony as to all matters relating to the duties imposed upon it by law. If any member of the board shall without cause absent himself from two of its regular meetings consecutively his office shall be deemed vacant and such vacancy shall be filled by appointment as hereinbefore provided. § 3, c. 58, 1890.
am'd.

§ 4, c. 58, 1890.
am'd.

§ 295. Certificate of registration. Fee. It shall be the duty of each person licensed by the board to practice dentistry in this state to procure from the secretary of the board, on or before July first, annually, a certificate of registration. Such certificate shall be issued by the secretary upon payment of a fee to be fixed by the board, not exceeding the sum of two dollars. All certificates so issued shall be prima facie evidence of the right of the holder to practice dentistry in this state during the time for which they were issued. Any certificate or license granted by the board may be revoked by it upon conviction of the party holding it of a violation of any of the provisions of this article. Every person receiving such certificate shall conspicuously expose the same in his place of business.

§ 5, c. 58, 1890.
am'd.

§ 296. Examination and qualification of practitioners. Any person desiring to begin the practice of dentistry in this state must in order to be eligible for examination furnish to the board satisfactory evidence that he has been engaged in the active practice of dentistry for at least three years immediately preceding such examination, or that he has pursued the study of dentistry in the office or under the supervision of a regularly practicing dentist for such period. He shall be examined by the board with reference to his knowledge and skill in dentistry, and if upon such examination such person is found in the judgment of said board to possess suitable qualifications to practice dentistry, and, if the board is satisfied that the applicant has a good moral character, it shall issue to such applicant a license to practice dentistry in accordance with the provisions of this article; provided, that any person desiring to commence the practice of dentistry in this state and having a diploma issued by any reputable dental college or dental department of any university shall, in person, present the same to the state board of examiners, and the board being satisfied as to the genuineness of the diploma, may without examination issue a license to such person to practice dentistry in this state on payment of the license fee hereinafter provided for. All licenses issued by the board shall be signed by the several members thereof, and be attested by its president and secretary under the seal of the board.

§ 7, c. 58, 1890.
am'd.

§ 297. Who regarded as practicing dentistry. A person shall be deemed to be practicing dentistry within the meaning of this article, who shall perform operations or parts of operations of any kind or treat diseases or lesions of the human tooth or jaw or correct malpositions thereof. But nothing in this article contained shall be so construed as to apply to acts of bona fide students of dentistry done in the pursuit of clinical advantages under the direct supervision of a preceptor or a licensed dentist in this state during the period of their enrollment in a dental college and attendance upon a regular course in such college, or to prevent any legally qualified resident physician and surgeon from extracting teeth, or to prevent any person from using any domestic remedy or other means for the relief of pain.

§ 8, c. 58, 1890.
am'd.

§ 298. Fee for examination. Annual reports, etc. The board of dental examiners may require each person applying to it for examination to pay a fee not exceeding ten dollars, which shall in no case be returned. If the applicant shall receive a license to practice, he shall thereupon pay the further sum of five dollars, which shall also entitle him to receive a certificate of registration for the current

or registration year in which such license is issued. Thereafter he shall annually obtain a certificate as hereinbefore provided. Out of the funds received by the board each member may be paid the sum of five dollars for each day actually engaged in the duties of his office, and four cents per mile for the distance necessarily traveled in going to or returning from meetings of the board. Such expenses shall be paid from the fees received by the board under the provisions of this article and no part of the salary or other expenses of the board, except the printing of the annual report, shall be paid out of the state treasury. All moneys remaining after the payment of such per diem allowance and mileage as above provided for shall be held by the secretary as a special fund for defraying the expenses of the board in carrying out the provisions of this article. The secretary shall give a bond in such sum and with such conditions as the board may from time to time direct. The board shall make an annual report of its proceedings to the governor on or before the fifteenth day of November in each year, which report shall contain an account of all moneys received and disbursed by the board during the preceding year.

§ 299. Penalty for violation of this article. Any person violating any of the provisions of this article is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine, not exceeding three hundred dollars, or by imprisonment in the county jail, not exceeding sixty days, or by both. § 9, c. 58, 1890.
am'd.

§ 300. Penalty for false pretense. Any person who shall knowingly or falsely claim or pretend to have or hold a certificate of registration, diploma or degree granted by a society or by the board of dental examiners, or who shall falsely and with intent to deceive the public claim or pretend to be a graduate from any dental college, not being such graduate, is guilty of a misdemeanor, and upon conviction is punishable as provided in section 299. § 10, c. 58, 1890.

§ 301. Penalty for practicing under false name, etc. Any person who shall be licensed under the provisions of this article and who shall practice dentistry under a false name with intent to deceive shall be liable to have his license revoked upon twenty days' notice of such proposed revocation and of the time and place of considering such revocation by the state board of dental examiners. Any person, who after revocation of his license continues to practice dentistry in this state is guilty of a misdemeanor and upon conviction thereof is punishable as provided in section 299. § 11, c. 58, 1890.
am'd.

CHAPTER 5.

STATE OFFICERS AND BOARDS.

ARTICLE 1. — MISCELLANEOUS PROVISIONS.

§ 302. Beginning and end of fiscal year. The fiscal year for the state shall commence the first day of July and end on the thirtieth day of June in each year, and all reports required annually or biennially by any state officer shall be made to and include the thirtieth day of June preceding, and all accounts of said officers shall be closed and balanced to that date. § 1, c. 67, 1893.

§ 303. Appropriations, when available. All appropriations made for the maintenance of the state institutions or other purposes § 2, c. 67, 1893.

by the legislative assembly shall become available on the first day of July next succeeding their enactment, unless otherwise specially prescribed by law.

§ 1, c. 118, 1890.
am'd.

§ 304. Penalty for failure to make reports. Any public officer who is required to make an official report to any other officer, or board, who willfully neglects to make such report at the time and substantially in the manner required by law, shall forfeit and pay to the state a penalty of not less than twenty dollars nor more than five hundred dollars, to be recovered from such delinquent officer, or from him and the sureties upon his official bond.

§ 2, c. 118, 1890.

§ 305. Attorney general to prosecute. Upon the willful neglect of any public officer to make any report required by law it shall be the duty of the officer or board to whom such report should be made promptly to notify the attorney general of such failure to report, whose duty it shall be to investigate the neglect of duty complained of; and, if in his opinion, the officer has not a sufficient excuse for such failure, the attorney general shall prosecute such officer for the recovery of the penalty above provided.

§ 1, c. 98, 1891.

§ 306. Penalty. 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 willfully neglects to make such report, or fails to perform such official duties, shall forfeit and pay to the state a penalty of not less than ten nor more than two hundred dollars, to be recovered from such delinquent officer, or from him and the sureties upon his official bond, in a civil action to be brought by the state's attorney in any court of record having jurisdiction.

§ 2, c. 98, 1891.

§ 307. Examination of records. State's attorney to prosecute. 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 the last section. It shall also be 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 the last section.

§ 3, c. 98, 1891.

§ 308. Blanks to be furnished. 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.

ARTICLE 2. — UNIFORM SYSTEM OF ACCOUNTING.

§ 2, c. 182, 1890.
am'd.

§ 309. State institutions to designate accounting officer. Duties. The managing board of each of the state institutions shall designate an accounting officer, whose duty it shall be to keep or supervise the financial accounts of the institution and to perform such other duties as shall be prescribed by law or by such managing board. They shall also designate either the accounting officer or some other

officer of the institution to act as a purchasing agent, whose duty it shall be to purchase all goods and supplies needed for the institution under such rules and regulations as the managing board shall prescribe.

§ 310. Institution treasurer. Duties of. The managing board of each state institution shall also appoint an institution treasurer, which treasurer shall be either some trustworthy person residing in the city or village at which the institution is located or some solvent national or state bank in such city or village. Such treasurer shall give a bond in such sum as the managing board may require, to be approved by the board and to be subject to the approval of the governor. It shall be the duty of such treasurer to hold and safely keep all public funds belonging to the institution which may come into his hands from any source and to pay out the same only on written orders signed by the accounting officer of the institution and countersigned by a member of the managing board, who shall have been authorized by a vote of the board to sign such orders. § 3, c. 182, 1890.

§ 311. Care and custody of funds belonging to inmates. It shall be the duty of each superintendent of any state institution, when the care and custody of any funds belonging to inmates thereof is by law devolved upon him, to keep accurate accounts of such funds in books provided for that purpose, and to pay out such funds under such rules and regulations as may be prescribed by law or by the board of management, taking proper vouchers therefor in all cases; and every such superintendent shall give a bond in such sum as may be required by law, or may be prescribed by the board of managers of such institution, to be subject to the approval of the state examiner, conditioned for the faithful performance of his duties and a due accounting for the funds intrusted to his care. § 4, c. 182, 1890. am'd.

§ 312. Funds belonging to institutions to be paid to superintendent. Each officer and employee of the several institutions shall pay over to the superintendent of the institution without delay any funds which may come into his hands belonging to any inmates of the institution and of which the superintendent is the legal custodian, and pay over to the accounting officer of the institution without delay any funds which may come into his hands belonging to the institution. § 5 a, c. 182, 1890.

§ 313. Duty of accounting officer. The accounting officer of each institution at the close of each month or oftener shall pay over to the institution treasurer all institution funds which may have come into his hands from sales of public property, board of inmates, labor of inmates or from other sources, and at the close of each fiscal quarter to draw an order on the institution treasurer in favor of the state treasurer for the amount of all such miscellaneous receipts, and at the same time to forward to the state auditor a statement of the amount of the same and the sources from which they have arisen. § 5 b, c. 182, 1890.

§ 314. Duty of state auditor and treasurer. It shall be the duty of the state auditor upon receiving such statement to place in the hands of the state treasurer a draft for the amount upon the institution treasurer, specifying the fund to which the same is to be credited, and upon payment of such draft to place the amount so received to the credit of such institution, adding to it any appropriation that may have been previously made by the legislative assembly for the institution, distributing it to the several appropriations from which it may have arisen, or to the current expense appropriation § 5 c, c. 182, 1-90.

according to his discretion; provided, that the miscellaneous receipts of the penitentiary and the state reform school shall be paid over to the state treasurer monthly instead of quarterly in like manner as herein provided.

§ 6, c. 182, 1890.
am'd.

§ 315. Duplicate monthly pay rolls. Bills for supplies, etc. The accounting officer of each institution shall prepare a duplicate monthly pay roll or pay rolls, showing the services rendered by each officer and employee of the institution, which pay roll shall contain the receipt of such officers and employees for the orders issued to them in payment for their services. Services rendered or labor performed by persons other than officers or employees shall be accounted for and proper vouchers made. The accounting officer shall require all persons selling goods or supplies to the institution to furnish with such goods, when delivered, bills or invoices in duplicate, and he may require persons, who furnished goods at intervals during the month, to furnish also a detailed statement in duplicate at the close of the month. Such bills and invoices shall, whenever practicable, be made upon the bill heads or blanks used by such persons in their business.

§ 7, c. 182, 1890.

§ 316. Manner of filing bills, etc. Duplicates sent to state auditor. Each of the original and duplicate bills mentioned in the last section shall be inclosed in an envelope or jacket, on one side of which shall be a classification of the items contained in the bill, and on the other side a receipt in the following form: Received on the day of from the (here insert the name of the accounting officer) of the (here insert the name of the institution) an order on the treasurer of the for the sum of dollars, in payment of the within account. Any pay rolls and vouchers for services rendered or labor performed shall be inclosed in similar envelopes or jackets. One of the duplicate pay rolls or bills with the accompanying receipts shall be retained by the accounting officer in the files of the institution and the other shall be sent to the state auditor within thirty days after the issuance of an order on the institution treasurer for the payment of the same.

§ 8, c. 182, 1890.

§ 317. Duty of storekeeper. It shall be the duty of the storekeeper of each institution, or some person to be designated by the superintendent, to check off all goods and supplies, when received, by the invoices; to certify thereon the quantity and condition of the same, and to notify the superintendent or the accounting officer forthwith, in case such goods or supplies do not appear to be of the kind or the quantity purchased or bargained for. In case goods are received without an invoice it shall be the duty of such storekeeper or designated person to make a memorandum bill of such goods and certify thereon as herein required.

§ 9, c. 182, 1890.

§ 318. Expense lists to be prepared monthly by accounting officer. The accounting officer at the close of each month shall make, or cause to be made, an expense list for expenses incurred during the month under appropriations for current expenses, and a separate expense list for expenses incurred under appropriations for other purposes, showing the name of each person rendering service or furnishing supplies, the nature of the service rendered and at what rate, the quantity, kind, price and cost of supplies furnished, and the amount to which each person is entitled by law; provided, that the state auditor may in his discretion allow items of the same class amounting to less than one dollar each, except food items, to be con-

solidated on the expense list as "sundries." Such expense list shall be audited by the managing board or a committee of the same, and shall be certified by the accounting officer of each institution and a member of the managing board to be designated by the board, and shall be forwarded to the state auditor by the accounting officer, not later than the eleventh day of the succeeding month.

§ 319. State auditor to draw warrants on receipt of expense lists. On receipt of such certified expense list the state auditor shall examine, adjust and approve, suspend or reject the same, and on or before the sixteenth day of each month draw his warrants on the state treasurer for the amounts due thereon to each institution, and no money shall be paid out of the state treasury for the use of such institution except on expense lists duly certified; provided, that the state auditor may in his discretion draw his warrants for an amount not exceeding twenty per cent in addition to the amount of the expense list, to be used for the immediate payment of such accounts as he may authorize to be so paid; such payments to be properly accounted for on the next monthly expense list. § 10, c. 182, 1890.

§ 320. When auditor to cancel unexpended appropriations. The state auditor shall at the close of each biennial period cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn for the period of two years after the expiration of the biennial period during which they became available under the law; provided, that the governor, secretary of state and attorney general may continue such appropriation or balances in force temporarily upon recommendation of the state auditor. § 11, c. 182, 1890.

§ 321. Appropriation of miscellaneous receipts. There is hereby appropriated for the use of the several institutions all the funds in the state treasury derived from miscellaneous receipts under sections 312 and 313. § 12, c. 182, 1890.

§ 322. Auditor to keep account with each organized county. The state auditor shall keep an account with each organized county of the state in which each county shall be charged with the amount of delinquent tax now 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. § 1, c. 183, 1890.

§ 323. County auditors to furnish abstract of tax list. He shall require the 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. § 2, c. 183, 1890.

§ 324. Monthly statements of taxes collected. County treasurer to furnish. He shall require the several county treasurers to furnish him with a statement, attested by the county auditor, on the fifteenth day of each month, showing the amount of state taxes collected during the preceding calendar month, and the October statement shall be an abstract of the total receipts by the county treasurer for the preceding year. § 3, c. 183, 1890.
1. c. 1, 1891.
am'd.

§ 325. Auditor to deliver to state treasurer order on county treasurer. The state auditor shall immediately after receiving the statement provided for in the preceding section draw and deliver to the state treasurer an order on each county treasurer for the amount so certified as collected for the state, 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. § 4, c. 183, 1890.

§ 5, c. 183, 1890.

§ 326. State treasurer to notify county treasurer. The state treasurer shall notify each county treasurer of the amount of such draft or order and designate the manner in which the money shall be forwarded to him, and upon receipt of the same shall forward such draft or order to the county treasurer with his indorsement, and such draft or order shall be the county treasurer's receipt for the amount stated.

§ 7, c. 183, 1890.
§ 2, c. 1, 1891.

§ 327. Record of fees to be kept by state officers. Reports. Every state officer, required by section 84 of the constitution of this state to cover into the state treasury all fees and profits arising from such office, shall keep a record of all such fees or profits in a book kept for that purpose, which book shall be the property of the state. They shall report to the state treasurer quarterly the amount of fees or profits received, verified by oath, and at the same time pay the amount of such fees or profits to the treasurer, taking duplicate receipts therefor, one of which shall be filed with the state auditor forthwith, and the auditor shall charge the treasurer with the amount thereof.

§ 8, c. 183, 1890.

§ 328. Apportionment of moneys belonging to counties, how made. 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 municipal corporations, shall be made by the auditor and treasurer, and each shall keep an account with such counties or corporations, crediting them with all such apportionments and charging them with all sums paid to them. The auditor shall draw an order on the state treasurer for the amount so credited, and forward the same to the county treasurer of such county or the clerk of such corporation, and at the same time send a written notice to the county auditor or clerk of such corporation, stating the amount so apportioned.

§ 9, c. 183, 1890.

§ 329. Moneys, how paid from treasury. Moneys shall be paid from the state treasury only upon the warrant or order of the auditor, and each warrant shall specify upon what fund or from what apportionment it is to be paid; provided, however, that the treasurer may redeem outstanding bonds or pay interest on bonds when due without the auditor's warrant, retaining such bond or interest coupon as his voucher for such payment until the next succeeding settlement.

§ 10, c. 183, 1890.

§ 330. Account current between auditor and treasurer. 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.

§ 11, c. 183, 1890.

§ 331. Monthly statements. 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.

§ 12, c. 183, 1890.

§ 332. Separate accounts with the several appropriations. The auditor and treasurer shall each keep a separate account with the several appropriations made by the legislative assembly, and also with each fund created by the sale of bonds and each permanent or current fund created by law.

§ 13, c. 183, 1890.

§ 333. Auditor and treasurer to procure books, blanks, etc. The auditor and treasurer are authorized and empowered to procure the necessary books and blanks to enable them to comply with the provisions of this article.

ARTICLE 3.—CLERK HIRE FOR STATE OFFICES.

§ 334. **Clerk hire allowed and fixed.** The following amounts are hereby fixed and allowed for clerk hire for the several state offices hereinafter mentioned, which sums shall be paid in monthly payments on the warrant of the state auditor: governor's office, two thousand nine hundred dollars per annum; secretary of state's office, two thousand five hundred dollars per annum; treasurer's office, one thousand five hundred dollars per annum; auditor's office, two thousand five hundred dollars per annum; attorney general's office, one thousand five hundred dollars per annum; superintendent of public instruction's office, one thousand eight hundred dollars per annum; commissioner of insurance's office, two thousand one hundred dollars per annum; commissioner of agriculture and labor's office, one thousand five hundred dollars per annum; secretary of the board of railroad commissioners, one thousand dollars per annum; provided, that all clerical appointments shall first be referred to the governor for his approval. § 1, c. 9, 1891. am'd.

§ 335. **Annual appropriation.** There is hereby annually appropriated out of any money in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of this article. § 2, c. 9, 1891.

ARTICLE 4.—STANDING APPROPRIATIONS.

FOR SALARIES OF STATE OFFICERS.

§ 336. **Annual appropriation.** There is hereby annually appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary to pay the salaries of the various state officers. § 1, c. 10, 1891.

§ 337. **Salaries payable monthly.** Unless otherwise provided by law the state auditor is directed to draw his warrant for such salaries monthly as the same become due. § 2, c. 10, 1891.

FOR MAINTENANCE OF PUBLIC OFFICES.

§ 338. **Supplies for public offices. Appropriation.** The board of trustees of public property are authorized and empowered to provide all necessary furniture, fuel, lights, stationery, postage and all other necessary supplies for the state offices and to make all necessary repairs upon the capitol building and executive mansion and the public grounds and parks connected therewith, and there is hereby annually appropriated out of any money in the state treasury not otherwise appropriated the sum of seven thousand dollars, or so much thereof as may be necessary to carry out the provisions of this section, and the state auditor is empowered to draw his warrant for such sums as he shall deem to be due on accounts or claims against such appropriation upon approval thereof by the governor, and the state treasurer is hereby directed to pay such warrants from the general fund of the state. § 1, c. 8, 1890. § 1, c. 11, 1891. am'd.

CHAPTER 6.

OFFICES AND OFFICERS.

ARTICLE 1.—QUALIFICATION FOR OFFICE.

§ 1, c. 5, Pol. C. **§ 339. Civil officers to qualify.** Except as otherwise specially provided, all civil officers shall qualify substantially in the manner and form herein set forth.

§ 2, c. 2, Pol. C.
§ 24, c. 47, 1887.
am'd. **§ 340. Certain officers to give bonds.** Each civil officer elected by the people or appointed by the governor or by any other authority provided by law, except the governor and the officers and members of the legislative assembly, judges of the supreme and district courts, county commissioners, court stenographers, the mayor and aldermen in cities, the president and trustees in villages, but including township treasurers, clerks, justices of the peace and constables, shall, before entering on his duties, give a bond conditioned for the faithful and impartial discharge of the duties of his office, (naming it fully), and render a true account of all moneys and property of every kind that shall come into his hands as such officer and pay over and deliver the same according to law.

§ 1, c. 105, 1890.
am'd. **§ 341. Oath of civil officers.** Each civil officer in this state before entering upon the duties of his office shall take and subscribe the oath prescribed in section 211 of the constitution. Such oath shall be indorsed upon the back of or attached to his bond, in case of an officer required to give a bond, or indorsed upon the back of or attached to the commission, appointment or certificate of election, in case of an officer not required to give a bond.

§ 5, c. 5, Pol. C.
§ 1, c. 32, 1890.
am'd. **§ 342. Approval of bonds.** The bonds of all state and district officers shall be given to the state, shall be approved by the governor as to sufficiency and by the attorney general as to form and such bonds and a duplicate original of the oaths of all other such officers shall be deposited in the office of the secretary of state. The secretary of state shall keep a book in which shall be made a correct copy of such bond, which book shall be called the "bond record" and, when such bonds have been recorded, they shall be deposited with and kept on file in the office of the state treasurer, except the bond of the state treasurer, which shall be deposited with and kept on file in the office of the state auditor. The secretary of state and state treasurer on receipt of such bonds shall issue a receipt therefor and such receipt shall be filed in the office of the state auditor. The bonds of all county, township and municipal officers shall be given to the county; those of all county and municipal officers under the county shall be approved by the state's attorney as to form and by the board of county commissioners as to sufficiency, and such bonds and a duplicate original of the oaths of office of all other such officers shall be filed with the county auditor, except the bond and oath of such auditor, which shall be filed with the clerk of the district court for the county or judicial subdivision. The bonds of township officers shall be approved by the chairman of the board of supervisors of the township.

§ 1, c. 6, 1879.
§ 38, sub. c. 1,
c. 112, 1883.
§ 1, c. 161, 1887.
§ 31, c. 132, 1890. **§ 343. Amounts of bonds of various officers.** The bond of each state officer required to give a bond, the amount of which is not otherwise provided by law, shall be in the penal sum of five thousand dollars; of the county auditor, register of deeds and clerk of the district court in the penal sum of ten thousand dollars each, except in counties having a population of less than ten thousand inhabitants,

in which counties such bonds shall be in the penal sum of five thousand dollars each; of the state's attorney and county judge in the penal sum of two thousand dollars each; of the county superintendent of schools, justices of the peace, constables and notaries public in the sum of five hundred dollars each. The bond of the sheriff, coroner and county treasurer shall each be in a penal sum to be fixed by the board of county commissioners; 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 collected by him in any year is less than two thousand dollars, then in double the amount of taxes to be collected; but in no case shall the bond of the county treasurer be less than one thousand dollars.

§ 344. Additional bond may be required of county treasurer. The board of county commissioners may require the county treasurer to give additional sureties whenever in the opinion of the board the existing security shall have become insufficient; and such board is authorized and empowered to require from the county treasurer an additional bond as required by law with good and sufficient sureties in such sum as the board may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered by the penalty in the previous bond. § 97, c. 28, Pol.C.

§ 345. Failure to give additional bond. Effect. If any county treasurer shall fail or refuse to give such additional bond or sureties for ten days from and after the day on which such board shall require him so to do, his office shall become vacant and another treasurer shall be appointed according to law. § 98, c. 28, Pol.C.

§ 346. Bonds of township and school district officers. It shall be the duty of each county auditor on or before the first day of March in each year to procure the proper blank bonds and send them to the clerk of each township and school district, and all such officers required by law to give bonds shall procure such bonds from the proper clerk; and shall immediately after the execution and approval thereof hand the same to the clerk of the township, whose duty it shall be forthwith to file such bonds, except those of justices of the peace, with the county auditor, and the county auditor shall on receipt thereof examine such bonds and see that they are properly executed and, if he finds that any bonds are not executed according to law, he shall note thereon any errors and return them to the clerk for correction, and it is hereby made the duty of the clerk to have such bonds corrected forthwith and return the same to the county auditor. The county auditor shall not issue any order upon the county treasurer for funds or money belonging to a civil township or school district to any person as treasurer of such township or school district until his bond has been filed as in this section provided. § 1, c. 94, 1898.
am'd.

§ 347. Township clerk to require officers elected to qualify. It shall 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 qualify within the time prescribed by law and in accordance with all other provisions thereof. If any clerk refuses or neglects to file the bonds of township officers as above provided, he shall be liable to a fine of not less than ten nor more than fifty dollars. § 2, c. 94, 1893.

§ 348. Fee for filing township officers' bonds. An appropriation of fifty cents for each bond required to be filed shall be made § 3, c. 94, 1893.

by the township and paid to the county auditor for the proper filing and entering of such bond.

§ 7, c. 5, Pol. C.

§ 349. Sureties to bond. Each official bond shall be given with at least two sureties, but the bond of the state treasurer shall have at least four, and that of a county treasurer at least three sureties.

§ 350. Governor may require additional bond of state officers. Whenever the governor shall deem the bond filed by any state officer insufficient, he may require another bond to be furnished with sufficient sureties, and for failure to give such bond within ten days after being so required such office shall be deemed vacant.

§ 8, c. 5, Pol. C.

§ 351. Approval of bond must be signed by officer approving. The approval shall in all cases be indorsed upon the bond and signed by the officer approving the same; but in case the board of county commissioners or the chairman of the township board of supervisors shall decide that a bond presented to them is insufficient, a reasonable time, not exceeding five days, shall be allowed the officer to supply a sufficient bond, and such board or officer may take three days to consider the approval of any bond. If such board or officer refuses or neglects to approve a bond of any county or township officer elect, he may upon three days' notice to such board or officer present the same to the judge of the district court, who shall, unless good cause for delay is shown, proceed to hear and determine the sufficiency of such bond, and may approve or disapprove the same as the facts warrant.

§ 1, c. 120, 1885.

§ 352. Bonds must be recorded. The bonds of all county officers shall immediately after the approval of the same be recorded at length in the office of the register of deeds of the county in a book to be provided for that purpose. When such bonds are so recorded they shall be forthwith filed as provided in section 342.

§ 9, c. 5, Pol. C.
am'd

§ 353. When term of office begins. Except when otherwise specially provided, the regular term of office of each county, township and precinct officer, when elected for a full term, shall commence on the first Monday of January next succeeding his election, but, if the office to which he was elected was vacant at the time of his election, although he was not elected to fill such vacancy, he shall forthwith qualify and enter upon the duties of his office.

§ 10, c. 5, Pol. C.

§ 354. When officers shall qualify. Except when otherwise specially provided, all state, district, county, township and precinct officers shall qualify and enter upon the discharge of the duties of their office on the first Monday of January next succeeding their election, or within ten days thereafter.

§ 11, c. 5, Pol. C.

§ 355. Failure to qualify. Vacancy. 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 as provided by law; but 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 thereof, the time above prescribed shall not govern, and he shall be allowed twenty days after the day such contest is determined or such obstruction removed in which to qualify.

§ 12, c. 5, Pol. C.
am'd.

§ 356. Bonds construed to cover all duties. The bonds of all civil officers shall be construed to cover duties required by laws passed subsequent to giving them, and no bond shall be void for failure to comply with the law as to matters of form or substance, but it

shall be valid as to all matters contained therein, if it complies substantially with the law.

§ 357. Re-elected incumbent to account before qualifying. § 13, c. 5, Pol. C. 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.

§ 358. Public property must be delivered to successor. § 14, c. 5, Pol. C. Every officer elected or appointed under the laws of this state shall on going out of office deliver to his successor in office all public moneys, books, records, accounts, papers, documents and property in his possession belonging or appertaining to such office.

ARTICLE 2. — VACANCIES AND SUPPLYING THE SAME.

§ 359. Vacancies, how caused. Every office shall become vacant on the happening of either of the following events: § 2, c. 22, Pol. C. am'd.

1. The death of the incumbent.
2. His insanity judicially determined.
3. His resignation.
4. His removal from office.
5. His failure to discharge the duties of his office, when such failure has continued for sixty consecutive days, except when prevented from discharging such duties by sickness or other unavoidable cause.
6. His failure to qualify as provided by law.
7. His ceasing to be a resident of the state, district, county or township in which the duties of his office are to be discharged, or for which he may have been elected.
8. His conviction of a felony or of any offense involving moral turpitude or a violation of his official oath.
9. His ceasing to possess any of the qualifications of office prescribed by law.
10. The decision of a competent tribunal declaring void his election or appointment.

RESIGNATIONS.

§ 360. Resignations, to whom made. Resignations must be in writing and made as follows: § 1, c. 22, Pol. C. § 1, c. 137, 1881. am'd.

1. Of the governor and lieutenant governor, to the legislative assembly if it is in session, and if not, to the secretary of state.
2. Of all other state and district officers, to the governor.
3. 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.
4. Of all the officers of the legislative assembly, to the respective branches thereof.
5. Of all elective county officers, by filing or depositing such resignation in the office of the county auditor, except that of county auditor, which shall be filed or deposited with the board of county commissioners, which resignation, unless a different time is fixed therein, shall take effect upon such filing or deposit.

6. Of officers of civil townships, to the board of supervisors of the township, except the members of such board, which shall be to the township clerk; and notice shall forthwith be given by the township clerk to the county auditor of the resignation of all officers whose bonds are filed with such officer.

7. Of all officers holding their office by appointment, to the body, board, court or officer that appointed them.

REMOVALS.

§ 3, c. 22, Pol. C.
am'd. **§ 361. Removal of officers. Causes for.** All district, county, township, city, municipal or state officers, not liable to impeachment, except representatives to congress and members of the legislative assembly, shall be subject to removal from office for misconduct, malfeasance, crime or misdemeanor in office or for habitual drunkenness or gross incompetency in the manner provided in the codes of civil or criminal procedure.

§ 4, c. 22, Pol. C.
am'd. **§ 362. 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 district court shall have exclusive original jurisdiction thereof.

§ 5, c. 22, Pol. C.
§ 1, c. 123, 1881. **§ 363. Court may suspend officer.** At any time after the commencement of the action the court may suspend the accused from the functions of his office until the determination thereof, if sufficient cause appears from testimony or affidavits then presented; and if such suspension takes place, the board of county commissioners shall temporarily fill such office by appointment.

§ 7, c. 22, Pol. C. **§ 364. 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 and property in his hands of whatever kind shall be delivered to his successor.

FILLING VACANCIES.

§ 8, c. 22, Pol. C.
am'd. **§ 365. Vacancies, how filled.** All vacancies, except in the office of a member of the legislative assembly, shall be filled by appointment as follows:

1. In state and district offices, by the governor.

2. In county and precinct offices, by the board of county commissioners, except vacancies in such board.

3. In offices of civil townships, by the justices of the peace of such township, together with the board of supervisors or a majority of them, and if a vacancy occurs from any cause in the board of supervisors, the remaining members of the board shall fill such vacancy.

§ 9, c. 22, Pol. C.
§ 1, c. 148, 1885. **§ 366. Vacancies in board of county commissioners, how filled.** When a vacancy occurs in the board of county commissioners, it shall be the duty of the remaining members of the board with the county judge and auditor immediately to appoint some suitable person to fill such vacancy from the district in which such vacancy occurred. In case a majority of such officers fail to agree upon a person to fill such vacancy the county treasurer shall be called in and act as an additional member of such board to fill such vacancy.

§ 10, c. 22, Pol. C. **§ 367. Brief vacancies, not to be filled.** If a vacancy occurs thirty days previous to an election at which it may be filled, no appointment shall be made unless it is necessary to carry out such election and the canvass of the same according to law; in which case

an appointment may be made at any time previous to such election to hold until after such election or until his successor is elected and qualified.

§ 368. Appointments to be made in writing. Term. § 11, c. 22, Pol. C.
Appointments under the provisions of this article shall be made in writing and shall continue in force until the expiration of the term in which the vacancy occurs and until his successor is elected and qualified, except as otherwise expressly provided by law.

§ 369. Appointees, how to qualify. A person appointed to office as herein provided shall qualify within the time and in the manner required of a person elected or appointed to such office for a full term thereof. § 12, c. 23, Pol. C. am'd.

ARTICLE 3. — DEPUTIES.

§ 370. Deputies may be appointed by certain officers. § 1, c. 6, Pol. C.
The state auditor, treasurer, superintendent of public instruction and § 1, c. 59, 1890.
secretary of state, the county treasurer, county auditor, sheriff, register am'd.
of deeds, surveyor, clerk of the district court and district and city assessors may each appoint a deputy for whose acts as such he shall be responsible; and each officer required to give a bond may require a bond from any deputy appointed by him, which bond shall be in the penal sum of not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection. Such appointment shall 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.

§ 371. Sheriff may appoint any number of. The sheriff may appoint such number of deputies as he may deem necessary. § 2, c. 6, Pol. C. am'd. § 1, c. 43, 1893.

§ 372. 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. § 3, c. 6, Pol. C.

§ 373. Certain persons ineligible as deputy. No state officer can appoint as his deputy any other state or district officer, nor can a state treasurer appoint as his deputy any county treasurer, county judge, register of deeds, sheriff, or county commissioner; nor can either the clerk of the district court, the register of deeds or sheriff appoint as his deputy either of the others as their deputies. § 4, c. 6, Pol. C.

§ 374. Officials to be residents. No person shall be appointed as deputy or employed as clerk or subordinate in any state, county or municipal office, or as a member, officer or subordinate upon any official board of the state or of any county or municipality of the state, who is not a citizen of the United States, or, if an alien over twenty-one years of age, who has not declared his intention to become such. § 1, c. 91, 1893.

§ 375. Offices, where kept. No county, township or municipal officer in this state shall keep his office or any books, papers, records or other property pertaining to his office at any place other than that in which he is required by law to keep such office. § 1, c. 90, 1893. am'd.

§ 376. Penalty for violation of last section. Any officer violating any of the provisions of the last section is guilty of a misdemeanor. § 2, c. 90, 1893. am'd.

CHAPTER 7.

THE JUDICIAL DEPARTMENT.

ARTICLE 1.—THE SUPREME COURT.

§ 1, c. 108, 1895. **§ 377. Terms of supreme court.** There shall be two general terms of the supreme court held each year at the seat of government, as follows: one on the first Tuesday in April and one the first Tuesday of October of each year.

§ 2, c. 169, 1890.
§ 2, c. 108, 1895. **§ 378. Special terms.** Whenever from any cause it appears to a majority of the judges of said court that the public interests demand that a special term of said court be held, the majority of the said judges have authority to appoint a special term of the supreme court to be held at the seat of government, giving twenty days' previous notice thereof by advertisement published in a newspaper at the seat of government of the state.

§ 379. Salaries of supreme judges. The judges of the supreme court shall each receive an annual salary of four thousand dollars.

ARTICLE 2.—THE CLERK OF THE SUPREME COURT.

§ 1, c. 170, 1890. **§ 380. Clerk of supreme court. How appointed.** There shall be a clerk of the supreme court, who shall be appointed by the judges thereof, and who shall hold his office during the pleasure of such judges.

§ 2, c. 170, 1890. **§ 381. Oath. Bond. Deputy.** Such clerk before entering upon his duties shall qualify by taking the oath provided in the constitution and by giving a bond in the sum of three thousand dollars with sufficient surety to be approved by the governor, conditioned for the faithful performance of his duties. Such clerk may appoint a deputy who shall take and subscribe the oath prescribed in the constitution and file the same in said court. The clerk shall be responsible for the acts of his deputy.

§ 3, c. 170, 1890. **§ 382. Clerk procures necessary records, seal, stationery, etc.** Such clerk, unless otherwise provided for by law, shall procure the necessary records, seal, stationery, postage, lights, fuel and furniture for the use of the supreme court, and the expenses thereof shall be audited and paid as in other cases.

§ 4, c. 170, 1890. **§ 383. Clerk personally performs all duties. When deputy can act.** He shall personally perform all the duties assigned him by law and the rules of said court. When he is unavoidably absent or unable for any cause to perform his duties, his deputy may perform the same.

§ 5, c. 170, 1890. **§ 384. To furnish syllabus for publication.** Whenever a syllabus is filed by the judges of the supreme court as required by law, the clerk shall immediately thereafter make and furnish a copy thereof together with the title of the action in which the same is rendered to the publishers of such daily newspapers in the state of North Dakota as consent to publish the same without charge.

§ 6, c. 170, 1890. **§ 385. Salary of clerk.** The clerk shall receive an annual salary of fifteen hundred dollars.

§ 7, c. 170, 1890. **§ 386. Fees in supreme court.** The following fees shall be charged and collected by the clerk:

For drawing any process issued under the seal of said court, one dollar.

Affixing the seal to any process of the court, twenty-five cents.

Filing papers, ten cents each.

Reading and filing any petition relating to any proceeding in court, ten cents.

Entering the appearance or default of appellant or plaintiff, or of defendant or respondent, fifteen cents.

Entering every rule or order, fifteen cents per folio.

A certified copy of every such rule or order, and of all papers, pleadings and proceedings filed with him, ten cents per folio.

Entering a decree or sentence, ten cents per folio.

Entering a judgment or order, fifteen cents for every judgment debtor; ten cents for each folio more than two.

Engrossing a remittitur to be sent to the district court, ten cents per folio.

Every certificate, twenty-five cents.

Taxing costs, fifty cents.

Entering satisfaction of record, fifteen cents.

Taking security, fifty cents.

Entering each cause on the calendar and making a copy for the bar, ten cents.

Searching records and files in his office, twenty cents for the records and files for each year.

For services required by law or the rules of the court not hereinbefore provided for, such fees as the court directs.

Admission of attorneys, three dollars.

§ 387. Fees covered into state treasury quarterly. He shall keep an accurate account of all fees received by him, and on the first days of January, April, July and October of each year he shall file with the state auditor a detailed statement of such fees, which statement must be verified by the affidavit of such clerk. He shall also file with such statement a receipt from the state treasurer, showing that all of such fees so received by him have been covered into the state treasury. § 8, c. 170, 1890.

§ 388. When clerk to receive additional fees. In addition to the salary hereinbefore prescribed he shall receive for his expenses in attending sessions of the supreme court, when held at points other than at the seat of government, the sum of five cents per mile for each mile necessarily traveled in going to and returning from such sessions and the sum of two dollars for each day he is in actual attendance thereat, which mileage and per diem shall be in lieu of all other traveling expenses to be allowed such clerk. Upon filing with the state auditor an itemized statement, verified by oath, showing the mileage and per diem aforesaid, the state auditor shall draw a warrant upon the state treasurer in favor of such clerk for the amount so shown to be due under such statement. § 9, c. 170, 1890.

ARTICLE 3. — THE SUPREME COURT REPORTER.

§ 389. Supreme court reporter, how appointed. The judges of the supreme court shall appoint a person of known integrity, experience and learning in the law, reporter of the decisions thereof, and such person shall hold such office during the pleasure of the judges. § 2, c. 76, 1879.
§ 93, Const.

§ 1. c. 171, 1890. **§ 390. Bond and how approved.** Such reporter shall give a bond to the state, with at least two sufficient sureties, to be approved by the chief justice, in the sum of two thousand dollars, conditioned for the faithful performance of his official duties.

§ 2. c. 171, 1890. **§ 391. Duties of reporter.** Such reporter shall, as soon as practicable after opinions of the supreme court are filed, prepare accurate copies of such opinions and of all dissenting opinions filed, prefixing thereto copies of the syllabi prepared by the court, the names of counsel in each case, a statement of the facts or pleadings and an abstract of the briefs of counsel, when he may deem such statement or abstract necessary or helpful to a full understanding of the case. He may, in his discretion, add a brief note referring to prior adjudications.

§ 3. c. 171, 1890. **§ 392. Clerk to furnish reporter copies of records and opinions.** It shall be the duty of the clerk to furnish the reporter with a copy of the record and the opinions in each case at the expiration of twenty days after the decision is filed, except when a rehearing is granted, and such reporter may retain the same for such reasonable time as he may require to prepare the report thereof, when it shall be returned to and remain in the office of the clerk.

§ 4. c. 171, 1890. **§ 393. To supervise publication of reports. Copyright for state.** It shall be the duty of the reporter to correct proof, prepare suitable indices for and supervise the publication of all volumes of reports of the decisions of the supreme court, which may hereafter be published under the authority of the state; and to secure a copyright of each volume of such reports before the same are distributed for the exclusive use and benefit of the state, the procurement of such copyright to be properly printed in each volume, and, until provision for such publication shall have been made, all copies of decisions, syllabi, statements of facts and pleadings, abstracts of briefs and notes prepared by such reporter under the provisions of this article shall be filed with the clerk of such court.

§ 7. c. 171, 1890.
§ 1. c. 123, 1891.
am'd. **§ 394. Reports, how printed. Number.** It shall be the duty of the supreme court reporter to publish in book form the opinions of the supreme court, together with other matters as contemplated in section 391, when the judges of said court shall direct such publication to be made; provided, that each book shall contain not less than five hundred and fifty pages octavo of printed matter. The publication shall be let and paid for in the same manner as other public printing; but the printed matter shall be stereotyped and the stereotyped plates shall be the property of the state and shall be deposited in the office of the secretary of state. The first edition of each volume shall consist of seven hundred and fifty copies, which shall be delivered to the secretary of state to be by him distributed according to law; and volumes remaining undistributed shall be sold by him at three dollars per volume. The reporter's name must not appear on the back of such volumes, but each volume shall be labeled on the back, "North Dakota Reports" and shall be numbered consecutively beginning with volume 1 heretofore published.

§ 5. c. 171, 1890. **§ 395. Salary of reporter.** Such reporter shall receive an annual salary of eight hundred dollars.

ARTICLE 4. — MARSHALS OF THE SUPREME COURT.

§ 396. **Marshals of supreme court. Compensation.** The § 1, c. 90, 1890.
sheriffs of the counties of Burleigh, Cass and Grand Forks are hereby constituted and made the marshals of the supreme court, and they and each of them are authorized to serve all process of the court, and shall be entitled to charge and receive the same fees and mileage for the service of process issued by the court or otherwise, relating to the business of the court, and the same compensation for attendance upon the court as is now allowed by law to sheriffs for performing similar duties in the district courts of the state, which fee shall be paid out of the state treasury as other expenses are paid.

§ 397. **When respective marshals to act.** The sheriff of § 2, c. 90, 1890.
each of the respective counties aforesaid shall act as marshal during the term of such court in his county.

§ 398. **Liability of sheriffs acting as marshals.** Such § 3, c. 90, 1890.
sheriffs shall be liable on their official bonds given as sheriffs of their respective counties for the faithful and proper performance of their duties as marshals of the supreme court.

ARTICLE 5. — DISTRIBUTION OF SUPREME COURT REPORTS.

§ 399. **Supreme court reports, how distributed.** It shall § 1, c. 154, 1887.
be the duty of the secretary of state to deliver one copy of each volume of the North Dakota reports to the following officers and organizations: each judge of the supreme court of this state, each of the judges of the district courts of this state, the United States attorney for North Dakota, the attorney general for the state, the library of the congress of the United States, the library of the supreme court of the United States, the attorney general of the United States, the governor of the state, the public library of each state and organized territory of the United States that exchanges reports with this state, and three copies to the clerk of the supreme court of this state for the use of the court when in session, and to deposit ten copies in the state library to be retained therein; provided, that any of the above named officers or bodies which have been once supplied with any of the above named volumes need not be supplied with additional copies; and it is made the duty of each state officer above specified to deliver to his successor in office upon the expiration of his term of office all such volumes in his possession.

§ 400. **Secretary of state to supply auditors.** It is the § 3, c. 154, 1887.
duty of the secretary of state to furnish to each county auditor in this state three copies of each volume of such reports, and it is the duty of such auditor upon receipt of the volumes above specified to mark conspicuously upon the outside of the cover thereof with red ink or to brand thereon the words "property of the county of " (inserting the name of the county of which he is an officer).

§ 401. **County officers supplied.** The county auditor must § 3, c. 154, 1887.
deliver one copy of each volume so marked or branded into the custody of the clerk of the district court, county judge and state's attorney of his county, and each of such officers shall at the expiration of his term of office deliver such volume to his successor in office.

ARTICLE 6.—THE DISTRICT COURTS.

§ 1, c. 103, 1895. **§ 402. Judicial districts.** The state is divided into seven judicial districts, and terms of court shall be held in each district as provided in the following sections.

At the general election in 1896 there shall be elected in each judicial district, a judge of the district court, whose term of office shall be four years from the first Monday in January next succeeding his election and until his successor is elected and qualified.

FIRST JUDICIAL DISTRICT.

§§ 1-6, c. 81, 1890.
§§ 1-5, c. 71, 1893.
§ 1, c. 103, 1895. **§ 403. Boundaries and terms of courts.** The first judicial district consists of the counties of Grand Forks and Nelson, and two terms of the district court shall be held each year at the county seat of each of such counties as follows:

In Grand Forks county, commencing on the first Tuesday in June and the first Tuesday in December.

In Nelson county, commencing on the fourth Monday in May and the second Monday in November.

SECOND JUDICIAL DISTRICT.

§§ 1-10, c. 72, 1893. **§ 404. Boundaries and terms of court.** The second judicial district consists of the counties of Ramsey, Towner, Rolette, Benson, Pierce, Bottineau, McHenry, Ward and Williams and two terms of the district court shall be held each year at the county seat of each of such counties as follows:

In Ramsey county, commencing on the first Monday in December and the first Monday in May.

In Towner county, commencing on the fourth Monday in May and the third Tuesday in November.

In Rolette county, commencing on the third Monday in March and the fourth Monday in November.

In Benson county, commencing on the third Monday in October and the second Monday in April.

In Pierce county, commencing on the fourth Monday in December and the second Monday in June.

In Bottineau county, commencing on the fourth Monday in September and the fourth Monday in April.

In McHenry county, commencing on the fourth Tuesday in March and the third Monday in September.

In Ward county, commencing on the third Monday in April and the first Monday after the first Tuesday in November.

In Williams county, commencing on the first Monday in September and the third Monday in February.

THIRD JUDICIAL DISTRICT.

§ 1, c. 53, 1893. **§ 405. Boundaries and terms of court.** The third judicial district consists of the counties of Cass, Steele and Traill, and terms of the district court shall be held at the county seat in each of such counties each year, as follows:

In Cass county, commencing on the first Tuesday in February, the fourth Tuesday in April, the first Tuesday in September and the first Tuesday in November, but no jury shall be called at the February or September terms of such court; provided, that the judge may in his discretion call a jury for such terms for the trial of criminal cases.

In Steele county, commencing on the second Tuesday in June and the third Tuesday in October.

In Traill county, commencing on the second Tuesday in January and the fourth Tuesday in June.

FOURTH JUDICIAL DISTRICT.

§ 406. Boundaries and terms of court. The fourth judicial district consists of the counties of Richland, Ransom, Sargent, Dickey and McIntosh, and two terms of the district court shall be held each year at the county seat of each of such counties as follows: § 1. c. 54, 1893.

In Richland county, commencing on the first Tuesday in January and the first Tuesday in July.

In Ransom county, commencing on the first Tuesday in June and the fourth Tuesday in November.

In Sargent county, commencing on the third Tuesday in June and the second Tuesday in December.

In Dickey county, commencing on the fourth Tuesday in May and the second Tuesday in November.

In McIntosh county, commencing on the second Tuesday in May and the third Tuesday in October.

FIFTH JUDICIAL DISTRICT.

§ 407. Boundaries and terms of court. The fifth judicial district consists of the counties of Stutsman, Barnes, LaMoure, Griggs, Foster, Eddy, Wells and Logan, and two terms of the district court shall be held each year at the county seat of each of such counties as follows: §§ 1-9, c. 79, 1891.
§ 1, c. 73, 1893.

In Stutsman county, commencing on the first Tuesday in January and the first Tuesday in July.

In Barnes county, commencing on the second Tuesday in June and the second Tuesday in December.

In LaMoure county, commencing on the first Tuesday in March and the first Tuesday in September.

In Griggs county, commencing on the second Tuesday in May and the second Tuesday in November.

In Foster county, commencing on the second Tuesday in April and the second Tuesday in October.

In Eddy county, commencing on the fourth Tuesday in May and the fourth Tuesday in November.

In Wells county, commencing on the fourth Tuesday in March and the fourth Tuesday in September.

In Logan county, commencing on the fourth Tuesday in April and the fourth Tuesday in October.

SIXTH JUDICIAL DISTRICT.

§ 408. Boundaries and terms of court. The sixth judicial district consists of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian Reservation lying north of the seventh standard parallel, and is divided into judicial subdivisions as follows: §§ 1-9, c. 82, 1890.

1. The first subdivision consists of the county of Burleigh and two terms of the district court shall be held each year at the county seat thereof, commencing on the third Tuesday in May and the fourth Tuesday in November.

2. The second subdivision consists of the county of Billings and two terms of the district court shall be held therein each year at the county seat at such times as the judge of such court may direct.

3. The third subdivision consists of the county of Emmons, and two terms of the district court shall be held each year at the county seat thereof at such times as the judge of said court may direct.

4. The fourth subdivision consists of the county of Kidder, and two terms of the district court shall be held each year at the county seat thereof commencing on the third Tuesday in June and the second Tuesday in January.

5. The fifth subdivision consists of the county of Mercer, and two terms of the district court shall be held each year at the county seat thereof at such times as the judge of such court may direct.

6. The sixth subdivision consists of the counties of McLean and Sheridan, and two terms of the district court shall be held therein each year at the county seat of McLean county at such times as the judge of such court may direct.

7. The seventh subdivision consists of the county of Morton and all that portion of the Sioux Indian Reservation lying north of the seventh standard parallel, and south of Morton county, and two terms of the district court shall be held therein each year at the county seat of Morton county, commencing on the third Tuesday in April and the first Wednesday after the first Monday in November.

8. The eighth subdivision consists of the county of Oliver, and two terms of the district court shall be held therein each year at the county seat thereof at such times as the judge of said court shall direct.

9. The ninth subdivision consists of the counties of Stark, Wallace, Dunn, Hettinger, Bowman, McKenzie, Allred and all that portion of the Sioux Indian Reservation lying south of Hettinger county, and north of the seventh standard parallel, and two terms of the district court shall be held therein each year at the county seat of Stark county on the first Tuesday in April and the second Tuesday in September.

SEVENTH JUDICIAL DISTRICT.

§ 5, c. 103, 1895.

§ 409. Boundaries and terms of court. The seventh judicial district consists of the counties of Pembina, Walsh and Cavalier and terms of court shall be held in each of such counties in each year, as follows:

In the county of Pembina, at Pembina commencing on the first Tuesday in January, the first Tuesday in June, the first Tuesday in April and the first Tuesday in October; provided, that at the terms appointed to be held in the months of April and October no jury shall be called unless called by the court for the trial of criminal cases.

In the county of Cavalier, at Langdon on the third Tuesday in May and the first Tuesday in November.

In the county of Walsh, at Grafton on the fourth Tuesday in January, the third Tuesday in June, the third Tuesday in November and the third Tuesday in March; provided, that at the terms appointed to be held in the months of March and November no jury shall be called except in the discretion of the court for the trial of criminal cases.

§ 410. **Chambers, where held.** The court shall on the first Monday in each month, except in the months in which the terms of court are called to be held in Pembina county, have its chambers at Pembina in said county for the purpose of hearing and transacting such business as may come before it, and at all other times shall hold its chambers at Grafton in Walsh county, except on the third Monday in December and the fourth Monday in September, when it shall hold its chambers at Langdon in the county of Cavalier. § 5, c. 103, 1895.

ARTICLE 7.—GENERAL PROVISIONS RELATING TO DISTRICT COURTS.

§ 411. **Special terms of court.** Nothing contained in article 6 shall be construed to restrict the power of the court or any judge to call and convene other terms of court in any of said counties and require the attendance of jurors at the same in the manner provided by law, but such special terms shall not supersede the requirement to hold any general term hereinbefore provided for. § 3, c. 53, 1893.

§ 412. **In case of holidays.** In case the day appointed for the commencement of the term in any county shall be a statutory holiday such term may commence on the following day. § 2, c. 53, 1893.

§ 413. **Salaries of judges.** The judges of the district court shall each receive a salary of three thousand five hundred dollars per annum, payable quarterly. § 1, c. 92, 1893.

ARTICLE 8.—COURT STENOGRAPHERS.

§ 414. **Appointment, how made.** The judge of the district court in each judicial district may, whenever in his judgment it will expedite the public business, appoint a competent person to the office of court stenographer within his district. The order of appointment shall be filed in the office of the clerk and entered upon the records of the court in each county of the district, and the person so appointed shall take and subscribe the oath required of other civil officers and file the same in the office of the secretary of state, and shall hold his office and discharge the duties thereof in person until the order for his appointment is revoked, or another person is appointed to such office. In case such stenographer shall be incapacitated from acting the judge may appoint some suitable person to act in his place, whose minutes, transcripts and certificates shall have the same force and effect as though made by such official stenographer, but the certificates made by such person shall be under oath. § 1, c. 46, 1893.

§ 415. **Duties.** Such stenographer shall attend the sessions of the court within the district whenever the judge shall so direct, and shall take in shorthand all testimony given orally by the witnesses and all objections and rulings made and exceptions taken, also the instructions given orally by the court and all other proceedings at the hearing or trial not reduced to writing. § 2, c. 46, 1893. am'd.

§ 416. **Original minutes to be filed, where.** The original shorthand minutes so taken with the indorsement thereon in long-hand over the signature of the stenographer, giving the title of the action and stating the contents and time and place of taking, shall in every case be filed in the office of the clerk of the court of the county in which the action is pending at the conclusion of the trial or as soon thereafter as practicable, but the same may be withdrawn by the stenographer at any time for a reasonable period for the purpose of transcribing. § 3, c. 46, 1893. am'd.

§ 4, c. 46, 1893.
am'd.

§ 417. Transcript of minutes, when to be made. The judge may, in a criminal action on the application of the defendant or the state's attorney, whenever in his judgment there is reasonable cause, order a transcript of the original minutes or any part thereof to be made at the expense of the county, and such stenographer shall plainly transcribe the same into longhand accordingly and file such transcript in the office of the clerk, and he shall at any time at the request of any party to a civil or criminal action, upon payment of his fees as provided by law, in like manner transcribe his original minutes or any part thereof taken in such action, and deliver the same to the party ordering such transcript, who may file the same in the office of the clerk whenever he shall so elect. Each transcript filed as herein provided shall be available alike to either party to the action for the purposes hereinbefore set forth.

§ 5, c. 46, 1893.

§ 418. Certification of transcript. Such transcript must in each case be certified by the stenographer to the effect that it is a correct transcript of his original shorthand minutes and a full, true and complete statement of the testimony and other proceedings which it purports to contain, and when he has ceased to hold his office as stenographer of the court he must make such certificate under oath.

§ 6, c. 46, 1893.

§ 419. Compensation. The stenographer shall be entitled to receive from each county in which he is required to attend court reimbursement for his traveling expenses at the rate of five cents per mile for each mile actually and necessarily traveled in going thereto and returning therefrom and compensation for his time actually employed in attending court therein in such sum as the judge shall allow, not exceeding ten dollars per day, all of which shall be audited and paid by the proper county on the order of the judge. For making transcripts as herein provided he shall be entitled to receive such compensation as the judge shall allow, not exceeding fifteen cents for each folio of one hundred words, and the same, when ordered by the judge, shall be paid by the county chargeable with the costs of the action, and in all other cases by the party requesting such transcript.

ARTICLE 9. — ATTORNEYS AND COUNSELORS AT LAW.

§ 1, c. 119, 1891.

§ 420. Power to admit vested in the supreme court. The power to admit persons to practice as attorneys and counselors at law in the courts of this state is hereby vested in the supreme court.

§ 2, c. 119, 1891.
am'd.

§ 421. Qualifications of applicants. Applicants for admission to practice as attorneys and counselors at law must be residents of this state, at least twenty-one years of age, of good moral character, and must have actually and in good faith pursued a regular course of study of the law for at least two full years, either in the office of a member of the bar of this state residing therein, and in regular practice, or in some reputable law school in the United States or partly in such office and partly in such law school. But in computing such period of study the school year of any such law school, consisting of not less than thirty-six weeks, exclusive of vacation, shall be considered equivalent to one full year.

§ 3, c. 119, 1891.
am'd.

§ 422. Examinations, how conducted. Each applicant must be examined in open court as to his learning and skill in the law by the judges thereof, or by a committee of not less than three members of the bar appointed by the court therefor, and the court must be satisfied before admitting to practice that each applicant has actually

and in good faith devoted the time hereinbefore required to the study of law and possesses the requisite learning and skill therein and the qualifications mentioned in the last section.

§ 423. **Oath of office.** Upon being admitted to practice as an attorney and counselor at law as above provided he shall in open court take the oath prescribed in section 211 of the constitution. § 4, c. 119, 1891. am'd.

§ 424. **Admission on certificate, how.** Any person becoming a resident of this state after having been admitted to the bar in any of the states of the United States, in which he has previously resided may at the discretion of the court be admitted to practice in this state without examination or proof of period of study as hereinbefore provided, on proof of the other qualifications by this article required and on satisfactory proof that he has practiced law regularly for not less than one year in the state from which he comes after having been admitted to the bar according to the laws of such state. § 5, c. 5, 1891.

§ 425. **Court may prescribe rules.** The supreme court may by general rules prescribe the mode by which examinations under this article shall be conducted and in which the qualifications required as to age, residence, character and period of study shall be proved, and may make any further rules, not inconsistent with this article, for the purpose of carrying out its object and intent. § 6, c. 119, 1891.

§ 426. **Foreign attorneys may practice, when.** Any member of the bar of another state, actually engaged in any cause or matter pending in any court in this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state without being subject to the foregoing provisions of this article. § 7, c. 119, 1891.

§ 427. **Duties of an attorney.** It is the duty of an attorney and counselor: § 4, c. 18, Pol. C.

1. To maintain the respect due to the courts of justice and judicial officers.

2. To counsel and 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 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.

§ 428. **Punishment for deceit.** An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, judge or party to an action or proceeding is liable to be disbarred and shall forfeit to the injured party treble damages, to be recovered in a civil action. § 5, c. 18, Pol. C.

§ 429. **Power of attorneys.** An attorney and counselor has power: § 6, c. 18, Pol. C.

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.

§ 7, c. 18, Pol. C. **§ 430. Proof of authority.** The court may on motion of 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.

§ 8, c. 18, Pol. C. **§ 431. Attorney not to be surety.** No practicing attorney and counselor shall be a surety in any action or proceeding which may be instituted in any of the courts of this state.

§ 11, c. 18, Pol. C. **§ 432. What courts may revoke or suspend license.** The supreme court or any district court may revoke or suspend the license of an attorney and counselor at law to practice in the courts of this state, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceeding shall be had, and an opportunity shall have been given him to be heard in his defense.

§ 12, c. 18, Pol. C.
am'd. **§ 433. Causes for revocation or suspension.** The license of an attorney and counselor at law may be revoked or suspended for either of the following causes:

1. When he has committed a felony, or a misdemeanor involving moral turpitude.

2. When he is guilty of a willful disobedience or violation of an order of the court, requiring him to do or forbear an act connected with, or in the course of, the profession.

3. For a willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. For doing any other act to which such a consequence is by law attached, or upon conviction for any of the offenses mentioned in sections 7013, 7022 and 7023.

§ 13, c. 18, Pol. C. **§ 434. Proceedings to remove or suspend.** The proceeding to remove or suspend an attorney may be commenced by direction of the court, or on motion of any individual. In the former case the court must direct some attorney to draw up the accusation; in the latter the accusation must be drawn up and sworn to by the person making it.

§ 14, c. 18, Pol. C. **§ 435. Accusations, how answered.** To the accusation he may plead or demur and the issues joined thereon shall in all cases be tried by the court, all the evidence being reduced to writing, filed and preserved.

§ 15, c. 18, Pol. C. **§ 436. Judgment of the court.** If the accused fails to answer or pleads guilty, the court shall proceed to render such judgment as the case requires.

§ 437. Appeal from judgment. An appeal lies to the supreme court from all orders of the district court revoking or suspending the license of an attorney and counselor at law; and upon an appeal being taken from such an order all the original papers, together with the transcript of the record and proceedings therein, shall thereupon be transferred to the supreme court to be there tried and determined as the law and the evidence shall warrant. A judgment of acquittal by the district court is final. § 16, c. 18, Pol. C.

§ 438. Refusal to pay over money. An attorney who receives money or property of his client in the course of his professional business and who refuses to pay or deliver the same to the person entitled thereto within a reasonable time after demand is guilty of a misdemeanor. § 17, c. 18, Pol. C.

§ 439. No penalty unless lien secured. When an attorney claims to be entitled to a lien upon money or property of his client in his possession, he is not liable to the penalty of the preceding section unless he neglects or refuses to pay or deliver such money or property to the person entitled thereto upon his giving a bond with sufficient surety to be approved by the clerk of the district court conditioned for the payment of the amount of such attorney's claim when legally established. § 18, c. 18, Pol. C.

§ 440. No liability if security given. Nor shall he be liable as aforesaid if he shall give a sufficient bond conditioned that he will pay or deliver the whole or any portion of such money or property to the claimant in the event such claimant shall finally establish his right thereto. § 19, c. 18, Pol. C.

ARTICLE 10. — JURORS.

§ 441. Qualifications of jurors. 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 or district courts, clerks of the supreme or district courts, sheriff, coronor, attorneys and counselors at law engaged in practice, or jailors, 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 on account of the commission of any offense which by special provision of law disqualifies him, 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, county judges, county commissioners, registers of deeds, practicing physicians, postmasters and carriers of the United States mail, shall not be compelled to serve as jurors, neither shall any member in good standing of any regularly organized fire company be compelled to serve as a juror in any of the courts of this state. § 1, c. 19, Pol. C.
§ 1, c. 73, 1883.
am'd.

§ 442. Jury summoned on order of district court. No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of such court requiring a jury to be summoned, and in such order shall specify the number of petit jurors to be summoned and the time and place where they shall appear. Such order may be issued at any time within thirty days prior to the first day of the term of the district court at which the jury is to attend or at any time during the term. § 5, c. 19, Pol. C.
§ 1, c. 74, 1883.

§ 6, c. 19, Pol. C.
§ 1, c. 62, 1885.

§ 443. Grand jury, how summoned. 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 sixteen nor more than twenty-three jurors.

§ 1, c. 80, 1887.
am'd.

§ 444. Drawing jurors in counties wholly or partially organized into civil townships. In each county in this state wherein terms of the district court are held the names of two hundred persons qualified to act as jurors shall be selected in the manner hereinafter provided, from which to draw the grand and petit jurors; provided, that if in any county there are not two hundred persons qualified to act as jurors then a less number, and the highest number possible, shall be selected. The board of county commissioners in each county, in which only a portion of the civil townships are organized, shall apportion to each of the organized townships and to each incorporated city and village in such county and to the unorganized portion of such county, as near as may be, its pro rata share of such names. The number of names to be selected from the portion of the county not organized into civil townships, and not embraced within the limits of any incorporated city or village, shall be selected by the board of county commissioners from the last annual tax list and furnished to the clerk of the district court of such county. In each county, in which all the townships are organized into civil townships, the board of county commissioners shall, as near as may be, apportion pro rata the number of names to be selected among the civil townships in their respective counties and among the incorporated cities and villages therein, if any. The names on the assessors' lists of the several townships, cities and villages for the preceding year shall be the basis for making such apportionment.

§§ 1, 2, c. 85,
1880.
am'd.

§ 445. Special venire to complete jurors' list, when. In counties whose assessors' lists contain less than two hundred names of persons qualified to act as jurors for the year preceding the making or filing of such lists of names for jurors, it shall be the duty of the board of county commissioners to select the highest number of names possible and when the number of names so selected shall not furnish a sufficient list from which to draw a grand and petit jury, a special venire shall be issued by the judge of the district court to complete the panels of jurors.

§ 2, c. 80, 1887.
am'd.

§ 446. Clerks of townships to post notices. What notice contains. Whenever the county commissioners of any county shall have made the apportionment mentioned in section 444, the county auditor shall forthwith notify the clerk of each township and village and the clerk or auditor of each city of the apportionment of his township, city or village, and such clerk or auditor shall immediately thereafter cause to be posted in three public places in his township, city or village a notice that the board of supervisors of the township, or the board of aldermen or city council of the city, or the board of trustees of the village, as the case may be, will meet to draw the names of qualified jurors of the township, city or village to make up the grand or petit jurors' list for the county. Such notice shall state the time and place of such meeting within the township, city or village, designating a day not less than five nor more than ten days from the day of posting such notice.

§ 3, c. 80, 1887.

§ 447. Aldermen and trustees to select jurors, how. At the time and place mentioned in such notice the board of supervisors of the township, or the board of aldermen or the city council of the

city, or the board of trustees of the village, as the case may be, shall meet and select from the names of the resident tax payers of such township, city or village three times as many names as are apportioned to the township, city or village by the county commissioners, and the township, city or village clerk or auditor shall at such meeting write each name so selected on a separate ticket and shall also record the list of the names so written and selected in a book to be kept for that purpose. Such board shall then compare the names on such tickets with such recorded list of names to satisfy itself that such tickets are correct. The tickets shall then be folded, placed in a box or some other receptacle and shaken up; one of the members of the board shall then select by lot from the tickets in such box or receptacle the proper number of names so apportioned to his township, city or village, as the case may be; and the clerk or auditor shall then record in a book to be kept for that purpose such names in the order in which they were drawn.

§ 448. Auditor to furnish list to clerk of district court. Such clerk or auditor shall immediately thereafter forward by mail to the clerk of the district court of his county a list of the names so drawn; and the clerk of the district court shall make out and record in a book to be kept for that purpose a list of the names so forwarded to him; but a failure of the officers of any township, city or village to comply with the provisions of the foregoing section shall not invalidate such list. § 4, c. 80, 1887.
am'd.

§ 449. Formation of county board to select jurors. Within three days after the receipt of the order of the judge of the district court directing a jury to be summoned, the clerk of the district court or his deputy and the county auditor, 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 such court, or for any other reason, the coroner shall serve with such officers in the place of the sheriff. Notice of such meeting, stating the object thereof and the time of the meeting must be served by the clerk of the district court upon each of such other officers in the manner provided for the service of a summons and he shall also notify by mail each practicing attorney or firm of attorneys in the county of such meeting at least one day prior thereto, and such meeting must take place within one day after the service of such notice. § 5, c. 72, 1883.

§ 450. Drawing jurors, manner of. At such meeting the clerk of the district court or his deputy shall write the name of each person on such 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, such ticket shall be folded and placed in a box or some suitable receptacle and shaken. § 6, c. 72, 1883.

§ 451. Drawing jurors, manner of, continued. One of such officers, other than the clerk of court, shall then proceed to draw enough of such tickets to equal the number of jurors directed to be summoned, and such clerk or his deputy shall record such names in the order in which they were 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 shall serve as petit jurors. § 7, c. 72, 1883.
am'd.

§ 452. Duty of clerk of court. Such clerk shall on the day of the drawing aforesaid issue a venire or venires as the case may be, § 8, c. 72, 1883.

directed to the proper officer of the county, commanding such officer to summon the persons whose names are drawn to appear before the district 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 is ordered.

§ 9. c. 72, 1883.
§ 5. c. 80, 1887.
am'd.

§ 453. Number of names to be always at maximum.

Such number of two hundred names shall at all times be kept full, when possible, by completing the number after each jury term of court; and at the end of each jury term of the district court the clerk shall make requisition upon the county commissioners for the furnishing of as many names as have been drawn so as to keep such list full. And at the subsequent meeting the board of county commissioners shall proceed to apportion as hereinbefore provided for making up the whole of such list, and the same proceedings shall be had as to such names so required, as are herein directed to be taken in making said list full, 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 village, 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 the jury list are to be drawn shall be stated therein as heretofore provided. A failure to comply with any of the provisions of this section shall not be ground for challenge of any juror, either grand or petit, or to the panel.

§ 10. c. 19, Pol.C.
am'd.

§ 454. Venire, how served. The officer receiving a venire shall forthwith serve the same by reading or delivering a true copy thereof to each person therein named, or by leaving such 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.

§ 11. c. 19, Pol.C.
am'd.

§ 455. Jurors must appear. Each grand and petit juror so summoned shall appear before the court on the day and at the hour specified in the summons and shall not depart therefrom without leave of the court.

§ 12. c. 19, Pol.C.

§ 456. Court may order jury 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 or petit jurors is not complete, or if no jury is drawn as above provided, the court may order the sheriff, deputy sheriff or coroner to summon without delay the required number of persons having the qualifications of jurors; and the persons so summoned shall forthwith appear before the court, and if competent shall serve on the grand or petit jury as the case may be, unless such persons are excused from serving or are successfully challenged.

§ 13. c. 19, Pol.C.
am'd.

§ 457. Summons 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 to complete the number requisite for a jury in that particular case.

§ 14. c. 19, Pol.C.

§ 458. Citizens to be selected as jurors in rotation. It shall be the duty of the respective boards in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors so to select and arrange the names 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.

§ 459. Penalty for failure or refusal to appear. If any person summoned to appear as a grand or petit juror fails, refuses or neglects to appear, such person shall be deemed guilty of contempt of 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 or 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 board of county commissioners, township board of supervisors, the board of aldermen or city council of any city, or the board of trustees of any village shall willfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, the person so offending may be fined by the court not less than five nor more than fifty dollars; and if any officer shall fail to perform any of the duties imposed upon him by this article, he shall be deemed 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 article he may be imprisoned in the county jail not longer than thirty days. § 15, c. 19, Pol. C.

ARTICLE 11. — ADMINISTRATION OF OATHS.

§ 460. Officers authorized to administer oaths. The following officers are authorized to administer oaths: § 1, c. 20, Pol. C.
§ 1, c. 106, 1890.

Each judge of the supreme court.

Each judge of the district court.

The clerk of the supreme court and his deputy.

Clerks of the district court, county auditors and registers of deeds and their deputies within their respective counties.

County commissioners within their respective counties.

Judges of the county courts.

Justices of the peace and notaries public within their respective counties.

City clerks or auditors, township clerks and village recorders within their respective cities, townships and villages. Each sheriff and his deputy within their respective counties in the cases provided by law. Other officers in the cases specially provided by law.

§ 461. Persons may affirm, when. Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing. § 2, c. 20, Pol. C.

ARTICLE 12. — NOTARIES PUBLIC.

§ 462. Appointment and qualifications of notaries public. The governor shall appoint in each county in this state from among the citizens of either sex one or more notaries public, who shall hold office for six 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; but the person to be eligible to such appointment must at the time of appointment have the qualifications of an elector as to age, residence and citizenship. § 1, c. 76, 1893.
am'd.

§ 463. Commission. Record. Fee and notice. The secretary of state shall issue a commission and duplicate thereof to each notary § 2, c. 76, 1893.
am'd.

public appointed by the governor, one of which shall be by such notary posted in a conspicuous place in his office; and the secretary of state shall collect and receive five dollars for the issuance of such commission and duplicate, which sum shall be paid into the state treasury and credited to the general fund. The secretary shall keep in his office a record of such appointments and the date of the expiration of the same, and shall notify each notary public by mail at least thirty days before the expiration of his term of the date upon which his commission expires, which notice shall be addressed to such notary public at his last known place of residence.

§ 3, c. 76, 1893.
am'd.

§ 464. Oath and bond. Each notary public before entering upon the duties of his office shall take the oath prescribed in section 211 of the constitution; and he shall give a bond to the state with one or more sureties, to be approved by the clerk of the district court of his county or of the county to which the same is attached for judicial purposes, in the penal sum of five hundred dollars, conditioned for the faithful discharge of the duties of his office.

§ 4, c. 76, 1893.
am'd.

§ 465. Vacancy. Disposition of records. Whenever the office of any notary public shall become vacant, the record of such notary together with all papers relating to the office shall be deposited in the office of the clerk of the district court of the county or judicial subdivision in which such notary public resides, and any notary public who on resignation or removal from office, or any executor or administrator of any notary public who neglects to deposit such records and papers as aforesaid for the space of three months, or any person, who knowingly destroys, defaces or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty nor more than five hundred dollars, and he shall also be liable in a civil action for damages to any party injured.

§ 5, c. 76, 1893.
am'd.

§ 466. Duty of notary. Each notary public, when any bill of exchange, promissory note or other written instrument, shall be by such notary public protested for non-acceptance or non-payment, shall give notice in writing thereof to the maker, and to each and every indorser of such bill of exchange, and to the maker of each security or the indorsers of any promissory note or other written instrument immediately after such protest shall have been made.

§ 6, c. 76, 1893.

§ 467. Service of notice. Each notary public shall serve notice personally upon each person protested against, or by properly folding the notice, directing it to the person 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 and prepaying the postage thereon.

§ 7, c. 76, 1893.

§ 468. Protest fee. The notary public making such protest shall be entitled to charge and receive the sum of twenty-five cents and postage for each notice so made out and served.

§ 8, c. 76, 1893.
am'd.

§ 469. Record of notices. Each notary public shall keep a record of all such notices and of the time and manner in which the same were served and of the names of all the persons to whom the same were directed, also 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 court of this state.

§ 9, c. 76, 1893.
am'd.

§ 470. Clerks of district courts to preserve records. The clerk of the district court shall receive and safely keep all the records and papers directed by this article to be deposited in his office and to

furnish certified copies thereof when required, and such copies shall have the same force and effect as if the same were certified to by the notary public by whom the record was made.

§ 471. **Impression of seal. Filing oath and bond.** Each notary public before entering upon the duties of his office shall provide an official seal and deposit an impression of the same together with his oath and bond in the office of the secretary of state. § 10, c. 76, 1893. am'd.

§ 472. **Commission recorded with clerk of the district court.** He shall before entering upon the duties of his office file his commission for record with the clerk of the district court of the county or judicial subdivision and shall deposit with such clerk an impression of his seal together with his official signature; and such clerk shall record the same in a book to be 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. § 11, c. 76, 1893.

§ 473. **Removal from county. Requirements.** Whenever a 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 necessary to comply with the preceding section before performing any official act in such county or subdivision. § 12, c. 76, 1893.

§ 474. **Revocation of commission. Notice.** In case the commission of any person so appointed is revoked, the secretary of state shall immediately give notice thereof by mail to such person and to the clerk of the district court of the proper county. § 13, c. 76, 1893. am'd.

§ 475. **Acting when disqualified. Penalty.** Any notary public who exercises the duties of his office with knowledge that his commission has expired or that he is otherwise disqualified, or who appends his official signature to any document when the parties thereto have not appeared before him, is guilty of a misdemeanor and on conviction is punishable by a fine of one hundred dollars for each offense, and shall also be removed from office by the governor. § 15, c. 76, 1893. am'd.

CHAPTER 8.

ELECTIONS.

ARTICLE 1. — GENERAL PROVISIONS.

§ 476. **Governs all but special elections.** All elections for state, district, county, township, city and ward and other officers provided by law, shall hereafter be held and conducted in the manner prescribed in this chapter, except as otherwise specially provided by law. § 1, c. 27, Pol. C. am'd.

§ 477. **General election, when held.** On the first Tuesday after the first Monday in November of each even numbered year an election shall be held in the several election districts of the state which shall be known as the general election, and the several state, district and county officers, judges of the supreme and district courts, members of the legislative assembly and the member of the congress of the United States, shall be elected at the general election next preceding the expiration of the term of each of such officers, respectively, except such officers as are required by law to be elected at special elections, and on a year when a president and a vice president § 1, H. B. No. 1, Sp. 1892.

of the United States are to be chosen a number of electors of president and vice president of the United States equal to the number of senators and representatives to which this state is entitled in the congress of the United States shall be elected at such election.

§ 43, c. 27, Pol.C.

§ 478. Highest number of votes elects. In all elections for the choice of any officer, unless it is otherwise expressly provided, the person receiving the highest number of votes for any office shall be deemed to have been elected to that office.

§ 47, c. 27, Pol.C.
§ 1, c. 52, 1885.
am'd.
§ 121, Const.

§ 479. Who entitled to vote. Every male person of the age of twenty-one years or upwards who shall have been a resident of this state one year, six months in the county and ninety days in the precinct next preceding the election, who is a citizen of the United States or has declared his intention to become such one year and not more than six years prior to such election conformably to the naturalization laws of the United States, or any person of Indian descent who shall have severed his tribal relation two years next preceding such election, shall be entitled to vote; provided, he has complied with the provisions of any law which is now or may in the future be in force relating to the registration of voters. And all persons possessing the qualifications mentioned in this section and who have resided in this state one year shall be eligible to any office in the state, except as otherwise provided in the constitution; provided, however, that persons shall vote in the precinct where they reside and not elsewhere.

§ 1, c. 58, 1895.

§ 480. Qualifications of Indian voters. No Indian or person of Indian descent who has not received a final patent conveying the title in fee of lands allotted to him within the boundaries of this state, pursuant to an act of the congress of the United States, approved February 8, 1887, and entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," shall be deemed a qualified elector of the state of North Dakota, or be entitled to the rights and privileges of an elector therein unless he was born within the limits of the United States, and has voluntarily taken up his residence within this state separate and apart from any tribe of Indians therein, and adopted the habits of civilized life, and is in no manner subject to the authority of any Indian chief or council or Indian agent of the United States.

ARTICLE 2.—ELECTION PRECINCTS.

§ 7, c. 66, 1891.
am'd.

§ 481. Precincts, how formed. The board of county commissioners of each county in the state shall at its first session after the taking effect of this code divide its county into election precincts and establish the boundaries of the same if it has not heretofore done so. The entirety of civil townships, cities or villages as voting precincts shall be preserved when possible, except when such preservation would conflict with the provisions of this section. In such case the civil township, city or village shall be divided into two or more precincts, but in no case shall a precinct be composed of parts of two civil townships or part of a township and city or village. Such board of commissioners shall designate one voting place in each precinct. No precinct shall contain more than three hundred electors. If at any election hereafter held more than three hundred votes shall be cast at any voting place it shall be the duty of the inspector in such precinct to

report such fact to the board of county commissioners which board shall at its next regular meeting divide such precinct as nearly as possible so that the new precincts formed therefrom shall each contain two hundred and fifty electors as nearly as practicable.

§ 482. Precinct, how construed. The word precinct as used in the constitution shall be construed to mean any incorporated city, and it is made the duty of the city council of such incorporated city to establish as many voting places in such precinct as may be necessary under the law, and such council shall define by ordinance the qualifications precedent for a voter removing from one voting subdivision to another within such incorporated precinct.

ARTICLE 3.—ELECTION OFFICERS AND THEIR DUTIES.

§ 483. Inspectors and judges of elections. Qualifications of. Duties. The chairman of the board of supervisors in organized townships shall by virtue of his office be inspector of elections. In case the township contains more than three hundred voters such chairman shall be inspector of elections for the precinct in which he resides and shall appoint the inspector in all other precincts which are component parts of the township of which he is chairman. In all cities in which the aldermen are elected in different years, the senior alderman shall be inspector of elections for the precinct in which he resides, and in cities in which the aldermen are not so elected, the alderman who shall act as inspector of elections shall be determined by lot in such manner as the city council shall prescribe. In case a ward in any city contains more than three hundred voters the senior alderman or the alderman chosen by lot shall be inspector of elections for the precinct in which he resides and shall appoint the inspectors in all other precincts which are component parts of the ward of which he is alderman. In incorporated towns and villages the president of the town or village board of trustees shall act as inspector, and, if the town or village contains more than three hundred voters, he shall act as inspector of the precinct in which he resides and appoint the inspectors in the other precincts. In case the alderman designated or selected to act as inspector in any ward is disqualified from acting, the other alderman of the ward shall act as inspector and appoint other inspectors when necessary, and in case the president of the board of trustees of any town or village is disqualified the remaining members of the board shall select one of their number to act as such inspector and appoint other inspectors when necessary. The inspector shall, prior to the opening of the polls in his precinct, appoint as judges of election two qualified electors of such precinct, who shall have been resident freeholders therein for at least ninety days next preceding such election, and who are members of different political parties and of the parties which cast the highest number of votes at the preceding general election; provided, that if at least one week prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the state at the last general election, shall nominate a member of such party as judge, having the qualifications above prescribed, presenting a certificate of such nomination signed by such chairman, he shall be appointed by the inspector, and such

§ 5, c. 60, 1893.
am'd.

judges together with the inspector shall constitute the board of election. No person shall be a member of the board of election who has anything of value bet or wagered on the result of such election or who is a candidate or who is the father, father-in-law, son, son-in-law, brother, or brother-in-law of any candidate at such election. If at any time before or during an election it shall be made to appear to any inspector by the affidavit of two or more qualified electors of the precinct that either of the judges is disqualified under the provisions of this section he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed and in case such person so disqualified shall have taken the oath of office as prescribed by law the inspector shall place such oath and affidavit before the state's attorney of the county; provided, that in case such inspector is disqualified from acting, the other two members of the board of township supervisors and the clerk shall, at least ten days before the date of holding the election, hold a meeting for the purpose of filling such vacancy. Such vacancy shall be filled by appointing an inspector who shall belong to the same political party as the disqualified inspector and the name of the inspector so appointed shall at once be reported to the county auditor by such clerk.

§ 16 b, c. 66, 1891,
am'd.

§ 484. Inspectors of election in unorganized townships, how appointed. In precincts consisting of unorganized townships the board of county commissioners shall at the July session of such board next preceding an election appoint in each precinct, as inspector of such election, some qualified elector of such precinct. Such inspector shall before the time of opening the polls in his precinct appoint two judges of election as provided in the preceding section and such judges and inspector shall constitute the board of election for that precinct. If any member of the board of election shall fail to appear at the hour appointed for the opening of the polls the remainder of the board shall select a member of his political party to serve in his stead; provided, that if the qualified electors of his party present at the polls shall nominate a qualified person for such vacancy, such nominee shall be appointed. If none of the members of the election board shall appear at the hour appointed for opening the polls the qualified electors present shall elect a board viva voce as nearly as possible in conformity with the provisions hereof.

§ 16 c, c. 66, 1891.

§ 485. Poll clerks. Such board of election shall appoint as poll clerks two qualified electors of the precinct, one from each of the two parties that cast the largest vote at the last state general election.

§ 8, c. 27, Pol. C.

§ 486. Oath of election officers. Previous to the votes being taken the inspectors, judges and clerks of election shall severally take and subscribe an oath in the following form: "I, A. B., do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge or clerk (as the case may be) according to law and the best of my ability; and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same."

Such oath may be taken before any officer authorized to administer oaths, and in case no such officer is present at the opening of the polls the inspector or judges of election are authorized to administer such oath to each other and to the clerks of election; and the person administering such oath shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

§ 487. Poll list, clerk to keep. Each clerk of election shall keep a poll list which shall contain in numerical order the names of all the persons voting at such election. § 19, c. 27, Pol. C.

§ 488. Duty of inspector and judge to challenge. If any inspector or judge of election shall know or have reason to believe that any person offering to vote is not a qualified elector it shall be his duty to challenge the right of such person to vote. § 23, c. 27, Pol. C. am'd.

ARTICLE 4.—ELECTION SUPPLIES.

§ 489. Ballots to be printed and distributed at public expense. At all general or special elections for state, district, county, city, township, village or other public officers within this state, including elections in cities, towns and villages incorporated by special act, all ballots cast shall be printed and distributed at public expense as hereinafter provided. The printing of ballots and cards of instruction for the electors in each county and the delivery of the same to the election officers as hereinafter provided shall be a county charge and for municipalities a municipal charge, the payment of which shall be provided for in the same manner as other county and municipal expenses; provided, that the provisions of this chapter shall not apply to elections for civil township or school district officers, nor to elections in incorporated cities and villages having less than three hundred legal voters as evidenced by the vote cast therein at the last preceding city or village election. § 1, c. 66, 1891. § 1, c. 60, 1893. am'd.

§ 490. Elector may write name of candidate on ticket, when. Except as otherwise provided in this chapter it shall be the duty of the auditor of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within the county participate and he shall cause to be printed on the ballots the name of each candidate whose name has been certified to or filed with him in the manner provided for in this chapter. Ballots other than those printed by the respective county auditors shall not be cast or counted in any election. Nothing in this chapter shall prevent any voter from writing or pasting on his ballot the name of any person for whom he desires to vote and such vote shall be counted the same as if printed on the ballot and marked by the voter. § 15, c. 66, 1891.

§ 491. Ballots, how prepared. Arrangement of names. All ballots prepared under the provisions of this chapter shall be white and of a uniform quality of paper and the name shall be printed thereon in black ink, and to the left of and not more than one-fourth of an inch from such printed name and blank space wherein names may be written, shall be a circle not less than three-eighths of an inch in diameter. At the head of each ballot shall be printed the name or designation of every political party represented on such ballot. Each ballot shall contain the name of each candidate whose nomination has been certified according to law, and none other. The candidates of the party casting the highest number of votes in the state for member of congress at the last preceding general election shall be arranged in the first or left hand column of such ballot; of the party casting the next highest number of votes in the state in the second column; of the party casting the next highest number of votes in the third column; and of any other party as the secretary of state may direct for state officers, or the county auditor for county officers; the municipal or city auditor, or in municipalities or cities not having a § 17, c. 66, 1891. § 6, c. 60, 1893. am'd.

municipal or city auditor, the municipal or city clerk for municipal or city officers, or the president of the board of trustees of corporate villages for village officers. The names of electors of president and vice president of the United States presented in one certificate of nomination shall be arranged in a group and placed at the head of the column under the party designated or represented in such certificate. Below the candidates for each office shall be left a blank space large enough for the name of a candidate to be written in. There shall be a margin on each side at least one-half an inch in width and a reasonable space between the names printed thereon so that the voter may clearly indicate, in the manner hereinafter provided, the candidate for whom he wishes to vote. Whenever the secretary of state has duly certified to the auditor any question to be submitted to a vote of the people the auditor shall have printed on the regular ballots the question in such form as will enable the elector to vote upon the question so presented in the manner hereinafter provided. The auditor shall also prepare the necessary ballots whenever any question is required by law to be submitted to a vote of the electors of any subdivision and not to the state generally. The municipal or city auditor or clerk, as the case may be, shall prepare and direct the printing and distributing of all ballots for municipal or city elections and for all questions that may be submitted to a vote of the electors of such municipality, except as provided in section 489.

§ 18, c. 66, 1891.
§ 7, c. 60, 1893.
am'd.

§ 492. County auditor to prepare ballots. Number. Poll books. The county auditor of each county shall provide for each election precinct in his county two ballots for each vote cast in such precinct at the last general election. Such ballots shall be distributed in packages or blocks containing not more than one hundred and fifty ballots each. The county auditor may provide for any such precincts such additional ballots as he may deem necessary. Each county auditor shall, at least five days before any election, have the ballots printed and the same may be inspected in the office of such auditor by any person. Such auditor shall also, at least five days before any election, send to the inspector in each precinct five copies of such ballot printed upon tinted paper and such inspector shall post the same in five public places in his precinct, one of such copies to be posted at the polling place therein, for which services such inspector shall receive two dollars. The auditor shall at the time of distributing such copies cause to be delivered to the several inspectors the necessary number of blank forms of poll books and also blanks for the election returns with the proper captions, forms of oath and forms of certificates and tally sheets necessary to carry out the provisions of this chapter.

§ 20, c. 66, 1891.
am'd.

§ 493. Ballots, how delivered. Official stamps. Each county auditor shall deliver or cause to be delivered by mail or other reliable method to the inspector of election in each precinct in his county the official ballot prepared by him at least twenty-four hours before the hour of opening the polls on election day. Such ballots shall be delivered in sealed packages marked on the outside plainly designating the number of ballots inclosed and the precinct for which they are intended. He shall also deliver or cause to be delivered to such inspector or, if that is impracticable, to one of the judges of election of such precinct a stamp with an ink pad for the purpose of stamping each ballot with the words, "Official Ballot" and the name or number of the precinct, the name of the county and the date of the election.

§ 494. **Instructions to be printed.** Each county auditor shall cause to be printed on cards in large type full instructions to electors as to the manner of obtaining and preparing ballots and also containing a copy of sections 558, 559, 6884 and 6885. He shall furnish ten such cards to the judges of election in each election precinct and the judges of election shall at the opening of the polls post at least one of such cards in each booth or compartment provided for the preparation of ballots and at least three of such cards in and about the polling place. There shall also be posted in each booth or compartment one of the official ballots without the official stamp hereinbefore provided for, and not less than three of such ballots shall be posted in other places in and about the polling place upon the morning of election. § 29, c. 66, 1891.

§ 495. **Poll books, contents of and how delivered.** It shall be the duty of the county auditor to provide uniform poll books for the use of his county, each poll book to contain a copy of the law prescribing the qualifications of electors and so much of this chapter as relates to the duties of inspectors, judges and clerks of election, and the penalties imposed for offenses; such poll book shall also contain blanks for all entries required to be made therein; he shall also deliver to the sheriff two copies of said poll books for each election precinct in the county, and the sheriff shall deliver the same to each inspector of election, and such inspector of election shall deliver or cause the same to be delivered to the clerks of election in his precinct on the day of election. § 46, c. 27, Pol.C. am'd.

§ 496. **Ballot boxes to be provided by board of county commissioners.** The board of county commissioners shall at the expense of the county provide suitable ballot boxes for each election precinct in its county, and a separate ballot box in which the ballots of women entitled to vote under this chapter shall be deposited.

§ 497. **Blanks to be transmitted by secretary of state.** The secretary of state shall at least thirty days before each general election transmit to each county auditor blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelope as he deems necessary for the guidance of such officers in making returns according to law; and the expenses of furnishing such blanks and envelopes shall be paid for by the state. § 48, c. 27, Pol.C.

ARTICLE 5.—NOMINATIONS FOR OFFICE.

§ 498. **Nominations, how made.** Any assembly or convention of delegates held for the purpose of making nominations to public office, or electors to the number hereinafter specified, may nominate candidates for public office to be filled by election within the state. Public printed or posted notice of holding such assembly or convention must be given at least six days before the holding of the same. Such nomination shall be made by delivering to and leaving with the officer charged with directing the printing of the ballots upon which the name is to be placed, within the time prescribed herein, a certificate of nomination for each candidate. An assembly or convention within the meaning of this chapter is an organized assemblage of delegates representing a political party or principle which cast five per cent of the total number of votes cast for member of congress at the last general election. § 2, c. 66, 1891. § 2, c. 60, 1893. am'd.

§ 3, c. 66, 1891.
am'd.

§ 499. Nominations certified, how. All nominations made by such convention shall be certified as follows: the certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his post office 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 represents, and it shall be signed and verified by the presiding officer and secretary of such convention who shall add to their signatures their post office address. Such certificate made out as herein required shall be delivered by the secretary or president of such convention by registered letter or in person, without charge, to the secretary of state or to the county auditor as hereinafter required.

§ 4, c. 66, 1891.
§ 4, c. 60, 1893.
am'd.

§ 500. Certificates of nomination, where filed. Certificates of nomination for candidates for offices to be filled by the electors of the entire state or of any division or district greater than a county and for legislative offices shall be filed with the secretary of state; certificates of nomination for county officers shall be filed with the county auditor of the respective counties wherein the officers are to be elected; certificates of nomination for municipal officers shall be filed with the city auditor or clerk of such municipality.

§ 5, c. 66, 1891.
§ 3, c. 60, 1893.
am'd.

§ 501. Nominations not by convention, how made. Candidates for public office may be nominated otherwise than in convention in the manner following: a certificate of nomination containing the name of a candidate for the office to be filled with such information as is required to be given in certificates provided for in section 499 shall be signed by electors residing within the district or political division in and for which the officer or officers are to be elected, in the following number: the number of signatures shall not be less than three hundred when the nomination is for an office to be filled by the electors of the entire state and when the office is to be filled by the electors of a district less than the entire state the number of signatures shall not be less than ten per cent of the number of votes cast for member of congress at the last preceding general election, and when the office to be filled is in an incorporated city, town or village the number of signatures shall not be less than ten per cent of the number of votes cast at the last preceding election held therein; provided, that in no case shall more than three hundred signatures be required. Such signatures need not be appended to one paper. Each elector signing a certificate shall add to his name his post office address. Such certificate may be filed as provided for in section 500 in the same manner and with the same effect as a certificate of nomination made by a party convention. The number of electors necessary to hold a mass convention shall be the same as the number of signatures required to nominate by petition.

§ 6, c. 66, 1891.
am'd.

§ 502. Certificate to contain but one name. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall participate directly or indirectly in the nomination at caucus, in convention or by petition of more than one person for each office to be filled and no person shall accept a nomination for more than one office.

§ 8, c. 66, 1891.
am'd.

§ 503. Certificates of nomination, when to be filed. Certificates of nomination, 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 in nomination. Such certificates of nomination

may be sent by registered letter deposited in the post office on or before the last day and the receipt therefor filed with the county auditor. Certificates of nomination herein directed to be filed with the auditor shall be filed not less than twenty days before the election; but the provisions of this section shall not apply to nominations for special elections to fill vacancies caused by death, resignation or otherwise. The secretary of state and the several county auditors shall cause to be preserved in their respective offices for six months all certificates of nominations filed therein under the provisions of this article. All such certificates shall be open to public inspection under proper regulations to be made by such officers.

§ 504. Secretary of state to certify nominations for state office. Not less than twenty-five nor more than thirty days before an election to fill any state or district office the secretary of state shall certify to each county auditor within which any of the electors may by law vote for candidates for such office the name and post office address of each person nominated for such office as specified in the certificates of nomination filed with him.

§ 9, c. 66, 1891.
am'd.

§ 505. Nominations to be published, when. At least ten days before an election to fill any public office under the provisions of this chapter the county auditor of each county shall cause to be published in one or more newspapers within the county the nominations certified to him under the provisions of this chapter. The auditor shall make such publications daily until the election, in counties where daily newspapers are published; but if there is no daily newspaper published within the county two publications in each newspaper will be sufficient; and if there is no newspaper published in any county, written or printed notices shall be posted in at least three public places in each precinct.

§ 10, c. 66, 1891.
am'd.

§ 506. In case nominee declines, certificate void. Whenever any person nominated for public office as in this chapter provided shall, at least twenty-five days before election, in writing notify the officer with whom the certificate nominating him is filed that he declines such nomination, such nomination shall be void.

§ 11, c. 66, 1891.

§ 507. Vacancies on ticket, how filled. Should any person so nominated die before the printing of the tickets or decline the nomination as in this chapter provided or should a vacancy occur upon the ticket for any other cause the vacancy thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, the committee of the political party in whose ticket such vacancy occurs may 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 name of the office for which he 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. When such certificate shall be filed with the secretary of state he shall, in certifying the nomination to the various auditors, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And if he has already forwarded his certificate he shall forthwith certify to the auditor of the proper county the name and post office address of the person so nominated to fill a

§ 12, c. 66, 1891.
am'd.

vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted. A failure to publish the name of a person so substituted shall not invalidate the election.

§ 13, c. 66, 1891. **§ 508. Vacancy occurring after tickets are printed.** When any vacancy occurs before election day and after the printing of the tickets and any person is nominated according to the provisions of this chapter to fill such vacancy the officer whose duty it is to have the tickets printed and distributed shall thereupon have printed on a requisite number of stickers the name of such substituted candidate and no other name, and shall mail them by registered letter or send by other reliable method to the judges of election in the various precincts affected by such vacancy, and the judges of election whose duty it is to distribute the tickets shall affix such stickers in the proper place on each ticket before it is given out to the electors.

§ 14, c. 66, 1891. **§ 509. Constitutional amendments to be advertised.** Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote the secretary of state shall, not less than thirty 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 505. Questions to be submitted to the people of the county shall be advertised as provided for nominees for office in such section.

§ 19, c. 66, 1891.
am'd. **§ 510. Publication of names. Error how corrected.** Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names of the persons nominated or in the printing of the ballots the judge of the district court may upon application of an elector make an order requiring the auditor to show cause why such error should not be corrected and upon the hearing thereof he may make such order as the facts warrant.

ARTICLE 6. — NOTICE OF ELECTION.

§ 2, H. B. No. 1,
Sp. 1892. **§ 511. Notice of election, how given.** The secretary of state shall, between the first days of July and September in such year, direct and cause to be delivered to the county auditor of each county a notice specifying all the state officers whose term of office will expire between the first Monday in December and the first Monday in January next succeeding and specifying also the several officers to be chosen in such county at the next general election. The auditor to whom such notice is delivered shall cause notice of the same to be given as provided in the next section.

§ 6, c. 27, Pol. C.
§ 5, c. 51, 1887. **§ 512. Notice of election to be published. Form. Posted, when.** The county auditors of the several counties shall cause notice of any election to be published in each of the newspapers designated by the board of county commissioners for the publication of their official proceedings at least once in each week for four consecutive weeks next preceding such election. Such notice shall be as nearly as circumstances will admit, as follows:

Notice is hereby given that on Tuesday, the day of next, at, in the township 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 that day. Dated this day of A. D. 18..

(Signed) A. B., County Auditor.

In case there shall be no newspaper published in the county in which such election is to be held, the county auditor shall deliver three copies of such notice for each precinct to the sheriff, coroner or other person designated by the board of county commissioners and such sheriff, coroner or other person shall post in three of the most public places in each precinct the notice pertaining to such precinct, 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 townships are not set off by law as election districts, such notices shall be posted as follows: one at the house where the election is authorized to be held and two at two of the most public places in that vicinity. The officer or person shall thereafter file with the county auditor an affidavit of such posting which shall be prima facie evidence of the facts therein stated.

ARTICLE 7. — CONDUCT OF ELECTIONS.

§ 513. When polls to be opened and closed. At all elections held under the provisions of this chapter the polls shall be open at eight o'clock A. M. and closed at five o'clock P. M. Twenty minutes prior to five o'clock P. M. the inspector shall proclaim to the electors outside the number of minutes before the polls will be closed and that such closing will be precisely at five o'clock P. M. § 40, c. 66, 1891.

§ 514. Examination of ballots and box at opening of polls. On the opening of the polls the inspector in each precinct shall produce the sealed package of official ballots and publicly open the same and deliver one block of ballots to the ballot clerk, retaining the other blocks if any until they are needed for voting. Before declaring the polls open such inspector shall see that the ballot box is empty and allow the judges to satisfy themselves thereof after which such box shall be locked. § 21, c. 66, 1891.

§ 515. Official ballot, how given to elector. The inspector or one of the judges of election shall deliver ballots to the qualified electors. Before delivering any ballot to an elector the inspector or judge shall print on the back and near the top of the ballot with a stamp provided for that purpose, the designation "official ballot" and the other words provided for in section 493 and also write his initials thereon. Each qualified elector shall be entitled to receive from the judges one ballot. § 23, c. 66, 1891.

§ 516. Marking ballots. Manner of voting. On receipt of his ballot the elector shall forthwith and without leaving the polling place retire alone to one of the booths or compartments provided, to prepare his ballot by placing a cross (X) mark within the circle before the name of each person for whom he wishes to vote, or the elector may write in the blank space or paste over any other name the name of any person for whom he may wish to vote, but the name of no candidate shall be counted which has not the cross (X) mark either written or printed within the circle, before such name; or in case of a ballot containing a constitutional amendment or other question to be submitted to a vote of the people, by placing a cross-mark within the circle before the word or words expressing his wish and for which he desires to vote. After preparing his ballot the elector shall fold it so that the face of the ballot will be concealed and the indorsement stamped thereon may be seen. He shall then § 8, c. 69, 1893, amended.

vote forthwith and before leaving the polling place and after voting he shall immediately leave the room.

§ 25, c. 66, 1891.

§ 517. Only one person in booth. Not more than one person shall be permitted to occupy any one booth or compartment at one time and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot and in no event longer than five minutes when the other booths or compartments are occupied.

§ 26, c. 66, 1891.

§ 518. In case elector spoils ballot. No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot. The ballots thus returned shall be immediately canceled and together with those not distributed to the voters shall be preserved and secured in sealed packages and returned to the county auditor from whom received.

§ 27, c. 66, 1891.
am'd.

§ 519. In case of disability of elector. Any voter, who declares to the judges of election or when it appears to the judges of election that he cannot read or that by blindness or other physical disability he is unable to mark his ballot, shall, upon request, receive the assistance of two of the election officers in the marking thereof who shall be chosen from different political parties, and such officers shall give no information regarding the same. The judges may in their discretion require such declaration of disability to be made by the voter under oath and they are authorized to administer such oath. No elector, other than one who is unable to read or on account of physical disability is unable to mark his ballot, shall divulge to any one within the polling place the name of any candidate for whom he intends to vote or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

§ 18, c. 27, Pol.C.

§ 520. Judges to deposit ballot 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 is a single ballot or not shall deposit it in the ballot box.

§ 22, c. 66, 1891.
am'd.

§ 521. Election booths, how built. The inspectors of election shall provide in their respective polling places a sufficient number of booths or compartments which shall be furnished with such supplies and conveniences as to enable the voter conveniently to prepare his ballot for voting, and in which electors may mark their ballots, screened from observation, and a guard rail with an opening so constructed that only persons within such rail can approach within ten feet of the ballot boxes or the booths or compartments herein provided for. The number of such booths or compartments shall not be less than one for each fifty electors or fraction thereof in the precinct. No election shall be held in a room in which spirituous or malt liquors are commonly sold. Not more than one elector for each booth shall be permitted within the railing at any one time. One challenger appointed and designated from each of the political party organizations shall be entitled to stand at the opening of the railing at the outside. If any person offering to vote shall be challenged by one of such challengers or by any member of the board of election, such person shall, unless such challenge is withdrawn, stand aside and shall not vote unless he makes an affidavit that he is a legally qualified elector of the precinct. The expense of providing such booths or

compartments and guard rails shall be a public charge and shall be provided for in the same manner as other election expenses.

§ 522. **Ballots of women to be deposited in separate box.** No ballot offered by any woman entitled to vote under this chapter shall contain the name of any person to be voted for at such election, except candidates for a school office, and no such ballot shall contain any proposition to be voted for except such as pertain solely to school matters; and all such ballots shall be deposited in a separate ballot box, but shall be canvassed with the ballots cast for candidates for school office by the male voters at such election.

ARTICLE 8. — CANVASS OF RETURNS.

§ 523. **Canvass of votes.** As soon as the polls of the election shall be finally closed the inspectors shall proceed immediately to canvass publicly in the presence of all persons desiring to attend the same the votes received at such polls and continue without adjournment until the canvass is completed and the statements hereinafter required are made. They shall commence by a comparison of the poll lists and the correction of any mistakes therein until they shall be found or made to agree. The box shall then be opened and the ballots therein taken out and counted by the inspectors, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots are found so folded together as to present the appearance of a single ballot they shall be laid aside until the count of the ballots is completed; and if, upon a comparison of the count and the appearance of such ballot, a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be destroyed. If the ballots in the box shall be found to exceed in number, after any such ballots folded together are destroyed, the whole number of votes on the poll lists, they shall be replaced in the box and one of the inspectors shall publicly draw therefrom by chance and without examination thereof and destroy as many ballots unopened as shall be equal to such excess. The number of ballots agreeing, or so as aforesaid being made to agree with the poll lists, the inspectors shall then proceed to open, count and ascertain the number of votes. § 35, c. 66, 1891.

§ 524. **Ballots, when void.** In the canvass of the votes, any ballot which is not indorsed as provided in this chapter by the official stamp and initials shall be void and shall not be counted, and any ballot 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 a ballot is sufficiently plain to gather therefrom a part of the voter's intention it shall be the duty of the judges of election to count such part. § 30, c. 66, 1891.

§ 525. **Result of canvass to be immediately announced.** The inspectors shall as soon as the count is completed publicly announce the result thereof, specifying the whole number of votes cast for each office and for each candidate respectively; also the number of votes cast for and against each proposition voted for at such election. They shall immediately prepare in duplicate a statement in writing setting forth at length, in words and figures, the whole number of votes cast for each office and the names of all the persons for whom such votes were cast, together with the number of votes cast for each person; also the number of votes cast for and against each § 36, c. 66, 1891.

proposition voted upon at such election which statement they shall certify to be correct.

§ 37, c. 66, 1891.

§ 526. Returns, how and where made. Compensation of officers. The inspector of election, or one of the judges appointed by him, shall forthwith deliver to the clerk of the town, city or village, one of such statements and one of such poll lists together with the stamp, to be filed and preserved in his office and shall with all convenient dispatch and within three days after the election deliver the other statement to the county auditor, it having been by the judges carefully sealed up together with the other poll list with the oaths of inspectors and clerks affixed, under cover, properly directed to the county auditor, and the person delivering such returns to the county auditor shall receive as compensation therefor the sum of two dollars and mileage at the rate of five cents per mile for each mile necessarily traveled in going to and returning from such auditor's office, to be paid out of the county treasury on the warrant of the auditor. The inspector of election shall lock the ballot box after the ballots have been replaced therein in the presence of the judges, and shall send the key properly labeled with the name and number of the polling precinct at the same time as he returns the poll books and statements to the county auditor, but shall retain in safe custody the ballot box used at the election, sealed with all the ballots cast at the same replaced therein, during sixty days next after election. And it shall be his duty to cause the said box to be safely delivered to the county auditor upon the written request of the board of canvassers at any time during said sixty days. In organized townships within thirty days after said date, or in cities or villages, the inspector of elections shall deliver, if he is not himself the officer in question, the boxes to the chairman of the board of supervisors of the civil township, or mayor of the city or president of the village, in which the election precinct is situated, as the case may be; and this officer shall keep in safe custody such boxes until the next election or hand them over to his successor in office to be by him safely kept until such time. At the following general election it shall be the duty of these officers to hand the ballot boxes over to the inspector of elections, and in case they have lost or destroyed them, then they shall replace them each at his own cost. In unorganized townships the inspectors of elections shall cause the ballot boxes to be safely delivered to the county auditor, between the sixtieth and ninetyeth day following the election. And the same compensation shall be allowed for such delivery as is allowed in this section for returning the poll book and statement to the auditor. Any person violating any of the provisions of this section is guilty of a misdemeanor.

§ 1, c. 71, 1881.

§ 527. Abstract of votes. Certificate of election. On the fifteenth day after the close of any election, or as soon as the returns are received, the county auditor shall call to his assistance a majority of the county commissioners of the county or the county treasurer, county judge and one county commissioner, and none of the persons so called shall be candidates for office, unless there is not sufficient of such officers who are not such candidates, and shall proceed to open such returns and make abstracts of the votes in the manner following: The abstract of the votes for member of congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for county and precinct officers shall be on one sheet; and it shall be the duty of the county auditor immediately to make out a certificate of election to each of

the persons having the highest number of votes for members of the legislative assembly, county and precinct officers respectively and to deliver such certificate to the person entitled thereto on his making application to the county auditor therefor; provided, that when a tie shall exist between two or more persons for the senate and house of representatives the county auditor shall give notice to the sheriff of the county who shall immediately advertise another election, giving at least ten days' notice. It shall be the duty of the county auditor of each county on receipt of the returns of any election to make out his certificate, stating therein the compensation to which the judges and clerks of 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. And immediately after canvassing the returns and making the abstract of votes as provided in this section, the county auditor shall make a certified copy of each abstract and forward it to the secretary of state. If the county auditor is a candidate for office he shall take no part in the canvass, but shall act as clerk of such board of canvassers, and the two officers called to the assistance of the county auditor to make such canvass shall call to their assistance one of the officers mentioned in this section who is not a candidate, and if there is no such officer remaining who is not a candidate, they shall call to their assistance a justice of the peace and it shall thereupon be their duty at once to attend and canvass such returns as provided by law.

§ 528. Tie vote. Duty of county auditor. If the requisite number of county officers shall not be elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the county auditor 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 his office at a time appointed by him, and they shall then proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected, and such auditor shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided. § 32, c. 27, Pol.C.

§ 529. Legislative districts composed of two or more counties. When two or more counties are embraced in one senatorial district, the respective county auditors shall attend at the office of the county auditor of the senior county of such district within twenty days after the day of election, and in conjunction with the auditor of the senior county shall compare the votes cast in the several counties comprising such district; and such auditors shall immediately make out a certificate of election for the person having the highest number of votes in such district for members of the legislative assembly, which certificates shall be delivered to the persons entitled thereto on application to the county auditor of the senior county of such district. § 3, c. 74, 1881.

§ 530. State board of canvassers. How constituted. The secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction shall constitute the state board of canvassers, three of whom shall be a quorum for the transaction of business, and if less than a quorum of such officers attend on the day appointed for a meeting of the board, then those so attending are § 1, S. B. No. 1,
Sp. 1892,
am'd.

hereby authorized to summon others of the state officers sufficient to constitute a quorum, who on being notified by the officer or officers so attending, shall attend without delay and act as a member of such board.

§ 2. S. B. No. 1,
Sp. 1892.

§ 531. When member disqualified. When a member of such board is a candidate for any office as to which the votes are to be canvassed by him, the governor shall designate some other state officer who shall act in his stead at the session of the board while the votes given for such member are being canvassed.

§ 3. S. B. No. 1.
Sp. 1892.
am'd.

§ 532. County auditor to forward abstract of votes. It shall be the duty of the county auditor of each county, under his official seal, to return to the secretary of state on or before the first Tuesday of December following any general election, and within thirty days following any special election, a certified abstract of the number of votes cast in his county at such election for each candidate for state and congressional offices, electors for president and vice president, judges of the supreme and district courts, members of the legislative assembly and for amendments to the constitution or proposition submitted by the legislative assembly; provided that the county auditor shall make a separate certified abstract of the votes cast for persons for electors of president and vice president of the United States. He shall seal up such separate abstract and indorse it: "Presidential Elector Returns" and without delay transmit it to the secretary of state by registered mail.

§ 4. S. B. No. 1,
Sp. 1892.
am'd.

§ 533. Secretary of state to file abstracts of votes. The secretary of state upon receipt of the certified abstract of votes from the several counties shall record the result of such election by counties and shall file and carefully preserve the certified statements so received from the county auditors, and if no such statement shall be received by him from the county auditor of any county prior to the time specified for the meeting of the state board of canvassers he may and it is his duty to dispatch a special messenger to obtain such statement, at the expense of such county, and such auditor shall on demand of such messenger make and deliver to him the statement required which the messenger shall deliver to the secretary of state to be recorded and filed by him as aforesaid. Such messenger shall be allowed the sum of ten cents per mile for each mile necessarily traveled in going to and returning from the office of such county auditor, the same to be audited by the state auditor upon the certificate of the secretary of state and the state treasurer shall present a bill for the amount so audited against the county failing to send up such returns as above provided, which bill so presented shall be audited by the board of county commissioners of such county and paid by the county treasurer.

§ 5. S. B. No. 1,
Sp. 1892.

§ 534. State canvassing board, meeting of. For the purpose of canvassing and ascertaining the result of such election the state board of canvassers shall meet at the office of the secretary of state on the second Tuesday in December next after a general election and within forty days after a special election, and the secretary of state shall notify the other members of the board of the same.

§ 6. S. B. No. 1,
Sp. 1892.
am'd.

§ 535. Duty of board. The board when thus formed shall examine such certified statements of the county canvassers, and if it shall appear that any material mistake has been made in the computation of votes given for any person, or that the county canvassers in any county have omitted to canvass the votes, or any part thereof, cast

in any precinct in their county, the board may dispatch a messenger to the county auditor of such county at the expense of such county, with its requirement in writing to him to certify the facts concerning such mistake and the reason why such votes were not canvassed; and the county auditor to whom any such requirement is delivered shall forthwith make a true and full answer thereto under his hand and official seal, and deliver the same to such messenger who shall deliver the same with all convenient dispatch to the secretary of state.

§ 536. **Adjournment of board.** Such board may adjourn from day to day as may be necessary, not exceeding three days in all. § 7. S. B. No. 1, Sp. 1892. am'd.

§ 537. **Canvass of votes to be public.** Upon the certified statements and returns so received the board shall proceed publicly to examine and make a statement of the whole number of votes given at any such election for each and all state offices; and another statement of the votes given for member of congress, each of which statements shall show the names of the persons to whom such vote shall have been given for either of said offices, and the whole number of votes given to each, distinguishing the several districts and counties in which they are given. A majority of such canvassers shall decide all matters of disagreement, and they shall disregard all technicalities and misspelling; the use of initial letters and abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were 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. § 8. S. B. No. 1, Sp. 1892. am'd.

§ 538. **Certificate of result.** They shall certify such statements to be correct and subscribe their names thereto and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such offices, or either of them, and shall make out and subscribe on each statement a certificate of such determination and deliver the same to the secretary of state. § 9. S. B. No. 1, Sp. 1892.

§ 539. **Certificates of election, secretary of state to issue.** The secretary of state shall record in his office each certified statement and determination so made by said board, and shall forthwith make out and transmit to each of the persons thereby declared to be elected a certificate of election as hereinafter provided and he shall also forthwith cause a copy of such certified statement and determination to be published in a newspaper printed at the seat of government. § 10. S. B. No. 1, Sp. 1892.

§ 540. **Certificate for member of congress.** The certificate of the election of a member of congress shall be signed by the governor with the great seal affixed and be countersigned by the secretary of state and the governor shall cause it to be delivered to the person elected. § 11. S. B. No. 1, Sp. 1892.

§ 541. **Presidential electors.** The board in examining and making a statement of the votes and in determining and certifying the persons chosen as electors of president and vice president shall proceed in the manner prescribed by law to be pursued by them in the canvass for state officers, and the secretary of state shall likewise file and record such statement and determination. In canvassing the returns for presidential electors the persons having the greatest number of votes are to be declared elected; and if more than the requisite number of persons are found to have the greatest and an equal number of votes the election of one of them shall be determined by lot, to be drawn by the governor in the presence of the other canvassers. § 12. S. B. No. 1, Sp. 1892. am'd.

The secretary of state shall prepare three lists of the names of such electors elected at any election, procure thereto the signature of the governor, and affix the great seal of the state to the same, and deliver such certificates thus signed and sealed to said electors on or before the second Monday in January next after such election.

§ 13, S. B. No. 1,
Sp. 1892.

§ 542. Form of certificate. A certificate shall be prepared by the secretary of state for each person elected, in substance as follows:

At an election held on the.....day of.....A. B. was elected to the office of.....of said state for the term of.....years from the.....day of.....in the year.....or, if to fill a vacancy, say for the residue of the term ending on the.....day of.....A. D. 18....

Given at Bismarck this.....day of.....A. D. 18....

Which certificate shall be signed by the governor and the secretary of state, and the seal of the state affixed, and be attested by at least one of the other canvassers.

§ 14, S. B. No. 1,
Sp. 1892.

§ 543. Constitutional amendments, etc. Certificate as to.

For the purpose of canvassing and ascertaining the result of the votes taken at any election upon any proposed amendment to the constitution, or proposition submitted to a vote of the people by the legislative assembly, the state board of canvassers shall proceed to examine such statements, and to ascertain and determine the result and shall certify under their hands a statement of the whole number of votes given for and the whole number of votes given against such amendment or proposition, and they shall thereupon determine whether such amendment or proposition has been approved and ratified by a majority of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination.

§ 15, S. B. No. 1,
Sp. 1892.

§ 544. Record of result. The secretary of state shall record in his office such certified statements and determination; and if it shall appear that such amendment or proposition has been approved, ratified or adopted as aforesaid, he shall also make a record thereof, and cause such record to be bound in the volume containing the original enrolled law passed at the next succeeding session of the legislative assembly, and cause such record to be published with such laws.

§ 16, S. B. No. 1,
Sp. 1892.

§ 545. What returns shall be canvassed. The board of state canvassers, in canvassing to ascertain the result of any election, shall canvass only the regular returns made by the county board of canvassers, as provided in this chapter.

§ 1, S. B. No. 2,
Sp. 1892.

§ 546. Proclamation of result by governor. The governor shall, within ten days after the completion of the canvass by the state board of canvassers of the votes cast for presidential electors, as certified by the auditors of the respective counties, declare by proclamation, to be printed in some newspaper printed and published at the seat of government, the names of the several persons who have received not less than one-fifth of all the votes cast, and the number of votes received by each person, and the several persons, who have received the highest number of votes so returned, and whose election shall not have been contested and notice of such contest given to the governor within ten days after the date of such proclamation, shall be deemed and taken to be elected, and the governor shall thereupon transmit to each person so chosen a certificate of his election.

§ 41, c. 27, Pol. C.

§ 547. Informality in returns disregarded. No election returns shall be refused by any county auditor 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 for any informality in holding an election or in making returns thereof; but all returns shall be received and the votes canvassed and a certificate given to the person who may by such returns have the greatest number of votes.

§ 548. **Canvassers, how to proceed.** The county auditor and other persons constituting the county board of canvassers shall, in canvassing the election returns, disregard technicalities and misspelling, the use of initial letters or abbreviations of the name of the candidates for office, if it can be ascertained from such vote for whom they were intended; but they shall not count votes polled in any place except at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office and punished accordingly. A majority of the members of such board shall decide all matters of disagreement. § 45, c.27, Pol.C. am'd.

§ 549. **Returns indorsed by secretary of state.** A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at such office on the envelope containing them. § 49, c.27, Pol.C.

ARTICLE 9. — RESIGNATIONS AND VACANCIES.

§ 550. **Resignations and vacancies. Special election.** Any person who shall receive a certificate of his election as a member of the legislative assembly, county auditor, county treasurer, register of deeds, sheriff, state's attorney, clerk of the district court, county judge or county commissioner shall be at liberty to resign such office although he may not have entered upon the execution of the duties thereof or taken the requisite oath of office and when any vacancy shall happen in the legislative assembly by death, resignation or otherwise it shall be the duty of the county auditor of the county in which such vacancy occurs officially to notify the governor thereof; whereupon the governor shall issue a writ of election directed to the sheriff of such county commanding him to notify the several boards of election in his county or district to hold a special election to fill such vacancy at a time to be appointed by the governor; provided, that if there is no session of the legislative assembly between the time such vacancy occurs and the time of holding the next general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy occurs in the office of a member of congress from this state, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy. § 35, c.27, Pol.C.

§ 551. **Duty of governor in case of certain vacancies.** Should a vacancy occur in the office of a member of the legislative assembly, while in session, by death, resignation, removal or otherwise, it shall be the duty of the governor immediately upon receiving official notice thereof to proceed in the same manner as is prescribed for other cases in the preceding section. § 37, c.27, Pol.C.

§ 552. **Division of legislative district subsequent to election.** If a vacancy occurs in the legislative assembly for any cause, and the county or counties comprising the district in which such vacancy occurs shall have been divided after the election of the member whose seat is vacant, and before the election to fill such vacancy, such election shall be ordered in each county in which any part of § 39, c.27, Pol.C. am'd.

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 county or district in which such vacancy occurred.

§ 40, c.27, Pol.C. am'd. **§ 553. Canvass and returns of elections to fill vacancies.** Votes cast at elections to fill vacancies shall be canvassed and returned as provided in other cases, and the county auditor shall without delay forward to the secretary of state the abstracts of the same.

ARTICLE 10. — PRESIDENTIAL ELECTORS.

§ 1, c. 109, 1890. am'd. **§ 554. When electors convene. Vacancies, how filled.** The electors of president and vice president shall convene at the seat of government of this state on the second Monday in January next after their election at the hour of twelve o'clock noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by the death or refusal to act, neglect to attend or other cause, the electors present shall immediately proceed to fill such vacancy by ballot, by a plurality of votes, and when all the electors shall appear, or the vacancies shall have been filled as above provided they shall proceed to perform the duties required of such electors by the constitution and laws of the United States.

§1, H.B. Nos. 53, Sp. 1892. **§ 555. Per diem and mileage of.** The electors of president and vice president of the United States shall receive the same per diem and mileage as is allowed to members of the legislative assembly, and there is hereby appropriated as a standing and continuing appropriation such a sum of money as may be necessary to pay such per diem and mileage.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§ 28, c. 66, 1891. **§ 556. Penalty for depositing unstamped ballot.** No inspector or 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 is guilty of a misdemeanor.

§ 11, c.27, Pol.C. **§ 557. Penalty for rejecting legal vote.** Any board of election or any member of any board of election who willfully and knowingly rejects any legal vote shall be subject to a fine of fifty dollars to be collected in a civil action before any justice of the peace in the name and for the benefit of the person aggrieved.

§3, c. 66, 1891. **§ 558. Penalty for failure of officer to perform duty.** Any public officer upon whom any duty is imposed by this chapter who shall willfully do or perform any act or thing herein prohibited or who willfully neglects or omits to perform any duty imposed upon him by the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof is punishable by forfeiture of his office and by imprisonment in the county jail for not less than one month nor more than six months or by a fine of not less than fifty nor more than five hundred dollars, or both.

§ 31, c. 36, 1891. **§ 559. Electioneering prohibited. Secret ballot.** No electioneering shall be done on election day by any officer of election nor by any person within the polling place or any building in which an election is being held or within fifty feet thereof nor obstruct the doors or entrance thereto or prevent free ingress to and egress from

said building. And the inspector and judges of election shall, if they deem it necessary, appoint an election officer; such election officer, or the sheriff, constable, or other peace officer is authorized and it is his duty to clear the passageway and prevent such obstruction and to arrest any person creating such obstruction. 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 any person 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 the inspector or one of the judges of election having charge of the ballots nor shall any person other than such inspector or 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 inspector or a judge of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Any elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots shall, before leaving the polling place, return such ballot to such judges. Whoever violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one hundred dollars and shall be adjudged to pay the costs of prosecution.

§ 560. Penalty for violation of election laws. If any inspector, judge or clerk of election, county auditor or other person in any manner concerned in conducting an 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 in a civil action in the name of the proper county. § 42, c.27, Pol.C.
am'd.

§ 561. No civil process served on election day. During the day, on which any general or special election shall be held in this state or in any district, county, city, village or precinct therein, no civil process shall be served on any person entitled to vote at such election. § 44, c.27, Pol.C.

§ 562. Compensation of election officers. There shall be allowed to the several inspectors, judges and clerks of election of each county two dollars per day to be paid out of the county treasury on the warrant of the auditor. § 38, c.27, Pol.C.
am'd.

ARTICLE 12. — CONTESTING ELECTIONS.

§ 563. Notice of contest, how served. Any person, claiming the right to hold an office, 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 such 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 of 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 such county or state, then the notice shall be served by leaving the same at the house where such person last resided, and if no service as above provided § 1, c. 54, 1885.

can be made, or if no such residence can be found in the state the district court or judge thereof may expressly direct the manner of such 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 shall be verified as a pleading in a civil action.

§ 2, c. 54, 1885.
am'd.

§ 564. Answer to notice of contest. Any person, upon whom the notice mentioned in the preceding section is served, shall within ten days after such service answer such notice, admitting or denying the facts alleged therein, and he shall state any other grounds upon which he rests the validity of his election, and shall serve a copy of such answer upon the contestant, and all allegations set forth in the notice and not denied in the answer shall be taken as admitted. Such answer shall be served as a pleading in a civil action, and when the contestant appears by attorney the service thereof may be made upon the attorney.

§ 3, c. 54, 1885.
am'd.

§ 565. Contest may be brought by whom. Such contest may be brought by a person claiming such office on his own motion, in his own name as plaintiff, but such contest cannot be brought by any other person unless the notice of contest is indorsed with the approval of the state's attorney of the county, or in case of his absence or refusal to approve it, with the approval of the judge of the district court.

§ 4, c. 54, 1885.

§ 566. Trial of contest. The judge of the district court, in case no term of such court occurs in such county within twenty days after the service of the answer in such contest, may appoint a term of such court therein; but if a term of court occurs in such county before that time, then the contest shall be tried at such term, unless otherwise ordered by the court. The district court or the judge thereof may, upon ten days' notice by either party, try such contest at chambers at any place fixed by the court; or he may on such application or on his own motion, if the pleadings involve a question of fact, order such issues to be tried before a jury, or refer the same as provided in this chapter, and postpone the trial thereof until it can be had in such county, regard being had to the speediest possible trial. If the issues are ordered to be tried by a jury the question to be tried must be distinctly stated in the order of trial, and the place of such trial must be designated in such order.

§ 5, c. 54, 1885.
am'd.

§ 567. Testimony and procedure in contests. All testimony and depositions taken in contests brought under the provisions of this article shall be taken in the same manner as in civil actions, and depositions may be taken in more than one place at the same time on leave of the court, and all matters relating to such contests shall be heard and tried as nearly as may be as civil actions are tried, except as otherwise provided in this article; and the costs shall be taxed in the same manner as in civil actions, and the court shall have power to order amendments to the notice and answer and to all other proceedings, as provided in the code of civil procedure, and he shall have power to make all orders and enter final judgment in such contests the same as in civil actions.

§ 6, c. 54, 1885.
am'd.

§ 568. Contests of elections for removal of county seat, etc. 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 thereof, any elector of such county on leave of the district court may contest the validity of such election as to the right of the place 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 such vote was taken, by serving a notice as provided in section 563, within thirty days after the result of such vote is canvassed. Such notice shall specify the grounds of such contest, and shall be filed with the clerk of the district court within ten days after the service thereof upon the county commissioners as aforesaid, and such contest shall be tried and determined by the district court or by a jury as provided for in this article for the contest of county officers. The county commissioners of such county shall appear and defend such contests, but in case they fail to appear and defend the same, any elector of such county may at any time before such trial on leave of the court appear and defend the same, and all testimony and depositions shall be taken in the same manner as in civil actions.

§ 569. Contests may be tried by referee. All contests brought under the provisions of this article may be referred by the court or a judge thereof to a referee as provided in the code of civil procedure, and when the parties to such contest do not consent to a reference the court or a judge thereof may in his discretion order such reference. § 7, c. 54, 1885.

§ 570. Surety for costs must be furnished. Any person bringing a contest under the provisions of this article 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 complete by simply indorsing the notice of contest as surety for costs. § 8, c. 54, 1885.

§ 571. Appeals in contest cases. Appeals from final judgments or decisions in such contests may be taken without making a motion for a new trial in the district court in the manner provided for in the code of civil procedure, except that the undertaking on appeal shall be in a sum to be fixed by the judge, not less than five hundred dollars, and shall be approved by the judge or by the clerk of the district court of the proper county or subdivision under the direction of the judge. § 9, c. 54, 1885. am'd.

§ 572. Appeals to the supreme court. Appeals to the supreme court under the provisions of this article must be taken within sixty days after notice of the entry of final judgment, and the party appealing must immediately procure the transmission of the record on such appeal to the clerk of the supreme court, and such appeal may be brought on for hearing before the supreme court at any time such 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 the term or in vacation. § 10, c. 54, 1885.

§ 573. Construction of this article. This article shall not be construed to affect any of the remedies or rights of action or proceedings provided for in the code of civil procedure. § 11, c. 54, 1885.

§ 574. Provisions of code of civil procedure applicable, when. Except as otherwise provided in this article, the provisions of the code of civil procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this article. § 12, c. 54, 1885.

§ 575. Provisions of code of civil procedure applicable as to appeals. The provisions of the code of civil procedure relative § 13, c. 54, 1885. am'd.

to appeals in civil actions, except in so far as they are inconsistent herewith, apply to the proceedings mentioned in this article.

ARTICLE 13. — CONTEST OF ELECTION OF PRESIDENTIAL ELECTORS.

§ 2, S. B. No. 2,
Sp. 1892.
am'd.

§ 576. Court for trial. Contests of presidential electors.

The board for the trial of contests of elections for presidential electors shall consist of the chief justice of the supreme court, who shall be president of the board, and two judges of the district court, to be designated by the governor. If the chief justice shall for any cause be unable to attend at such trial, the next senior judge on the supreme bench shall preside in place of the chief justice. The secretary of state shall be the clerk of the board, or in his absence or inability to act the clerk of the supreme court shall be the clerk. Each member of the court before entering upon the discharge of his duties shall take an oath before the secretary of state or some officer qualified to administer oaths, that without fear, favor, affection or hope of reward he will, to the best of his knowledge and ability, administer justice according to law and the facts in the case.

§ 3, S. B. No. 2,
Sp. 1892.
am'd.

§ 577. Contestant may apply to court. Any person, who by the proclamation of the governor as hereinbefore provided, appears to have received not less than one-fifth of the votes cast at an election for electors of president and vice president of the United States may apply to the board provided for in the preceding section for a declaration of his election as elector.

§ 4, S. B. No. 2,
Sp. 1892.
am'd.

§ 578. Application to state grounds of contest. Such application shall be made by petition in writing to be filed in the office of the secretary of state within ten days from the date of the proclamation provided for in section 546, who shall forthwith convene the board. The petition shall set forth the names of the persons whose election is contested, and the grounds for such contest. The petitioner shall before any proceedings are had upon the petition, except the convening of the board, file a bond to the state in such sum and with such surety as the court shall order, conditioned for the payment of all costs incurred in the prosecution of such contest in case he shall not prevail.

§ 5, S. B. No. 2,
Sp. 1892.
am'd.

§ 579. Notice to party contested, how given. Upon the filing of such petition and the giving of such bond the board shall order notice of the petition to be given, in such manner as it may direct, to the governor and to the person whose election is contested, which notice shall be published in such newspaper as the board shall order. Such notice shall contain a concise statement of the facts alleged in the petition and shall designate the time and place fixed by the board for the hearing of the same, which time shall not be less than three nor more than fifteen days from the filing of the petition.

§ 6, S. B. No. 2,
Sp. 1892.
am'd.

§ 580. Appearance by parties to contest. At the time fixed for the hearing the petitioner shall appear and produce his evidence and the person whose election is contested may appear and produce evidence in his behalf. Either party may appear in person or by attorney, and no other person shall be entitled to be made a party to such proceedings or to be heard personally or by counsel therein; provided, that if more than one petition is pending, or more than one election is contested the board may order the contests to be heard together in its discretion.

§ 581. **Hearing, how conducted.** The board shall thereupon hear the contest and decide all questions of law and fact involved. The burden of proof in each case shall be upon the petitioner and the hearing shall be confined to the grounds stated in the petition, but the board may in its discretion allow the petition to be amended. No ex parte affidavit shall be competent evidence at such hearing. No person shall be excused from testifying or from producing papers or documents at such hearing on the ground that such testimony will tend to criminate himself; but no person so testifying shall be liable to any suit or prosecution, civil or criminal, for any matters or causes in respect to which he shall be so examined or to which his testimony shall so relate. The board shall have the same power to compel the attendance of witnesses as the district courts of this state possess, and nothing in this article contained shall be held to limit the power of the board to make such regulations as to the conduct of the proceedings as it may deem proper, not inconsistent with the provisions of this article, and the board shall have all powers necessary to the complete carrying out and performance of the authority conferred upon it by this article.

§ 7, S. B. No. 2,
Sp. 1892.
am'd.

§ 582. **Determination of board, how certified.** The board shall determine in each case which of the parties to the proceedings is entitled to the office of elector, and shall cause such determination to be entered of record in such manner and form as it shall direct, and shall forthwith certify the same to the governor and secretary of state, and such determination so certified shall be final and conclusive that the person therein stated to have been elected is duly elected, and the governor shall forthwith transmit to such person a certificate of his election, and every such certificate shall recite that it is issued pursuant to a determination under this article, referring to this article. The court shall so arrange and conduct the trial of such contest that a final determination thereof shall be rendered at least six days prior to the second Monday in January next following.

§ 8, S. B. No. 2,
Sp. 1892.
am'd.

§ 583. **Failure of petitioner to appear, effect of.** If any petitioner shall fail to appear and prosecute his petition against any person who has been made a respondent thereto, according to the requirements of this article and of such rules as the board shall make, the board shall determine that he has so failed, and shall cause such determination to be entered of record in such manner and form as it shall direct, and shall forthwith certify such determination to the governor and secretary of state; and the same shall be a final and conclusive bar to the claim of the petitioner against such respondent as fully and completely as if such claim had been heard and determined on its merits, and the governor shall issue such certificate as provided in the preceding section.

§ 9, S. B. No. 2,
Sp. 1892.
am'd.

§ 584. **Costs. Taxation of.** The costs of all proceedings under this article shall be taxed under the direction of the board, and if two or more cases are heard together the costs shall be apportioned as the board shall direct, and in each case in which the petitioner shall not finally prevail the costs shall be paid by him, and in each case in which the petitioner shall finally prevail the costs shall be borne by the state, in which case the board shall certify the costs to the state auditor, who shall issue his warrant upon the state treasurer in payment of the same.

§ 10, S. B. No. 2,
Sp. 1892.
am'd.

§ 585. **Final hearing, how determined.** The final hearing and determination under this article shall be by a majority of the

§ 11, S. B. No. 2,
Sp. 1892.

board, but any single member may exercise any other of the powers given to the board by this article.

§ 13. S. B. No. 2,
Sp. 1892.

§ 586. Mileage and per diem of members of board. The members shall be entitled to receive for their travel and attendance the sum of six dollars per day and ten cents per mile for each mile necessarily traveled, to be paid from the state treasury upon the warrant of the state auditor.

ARTICLE 14. — CONTEST OF LEGISLATIVE ELECTIONS.

§ 1, c. 47, Pol. C.
am'd.

§ 587. Notice of contest in legislative elections. When any person intends to contest the election of a member of the legislative assembly, he may, within ten days after the result of such election shall have been determined by the board of canvassers, give notice in writing to the member whose seat he desires 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.

§ 2, c. 47, Pol. C.
am'd.

§ 588. Answer to notice. Any member elect, 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 upon the contestant or his attorney. All allegations contained in the notice and not denied in the answer shall be taken as admitted.

§ 4, c. 47, Pol. C.
am'd.

§ 589. Testimony taken, when. In all such contests the contestant may begin taking testimony as soon as the notice of contest is served and the person whose election is contested may commence taking testimony as soon as his answer is served, and both parties may continue to take testimony for ten days after the time for serving the answer has expired, after which time the contestant may take testimony in rebuttal only for five days.

§ 5, c. 47, Pol. C.
am'd.

§ 590. Notice to take depositions same as in code civil procedure. Depositions taken under the provisions of this article may be taken in the manner and upon the notice prescribed in the code of civil procedure for taking depositions in civil actions.

§ 6, c. 47, Pol. C.
am'd.

§ 591. Testimony taken at only two places at a time. Testimony taken under the provisions of this chapter shall not be taken at more than two places at the same time by either party, except by order of the court or the judge thereof.

§§ 7, 8, c. 47,
Pol. C.

§ 592. Subpœna to compel attendance of witnesses. When either party to such contest desires to take testimony therein, he may apply to any notary public or justice of the peace in the county where the testimony is to be taken for a subpœna to compel the attendance of witnesses, and the officer to whom such application is made shall thereupon issue his subpœna directed to such witnesses as shall be named to him, requiring their attendance before him at such time and place as may be named in the subpœna to give testimony relating to such contest.

§ 9, c. 47, Pol. C.
am'd.

§ 593. Depositions taken without notice on stipulation. It shall be competent for the parties to such contest by consent in writing to take depositions without notice. Such written consent shall be returned with the depositions.

§ 10, c. 47, Pol. C.
am'd.

§ 594. Subpœna served, how. Witnesses may be subpœnaed in the manner provided in the code of civil procedure.

§ 595. **Attendance compelled only in county.** No witness shall be required to attend an examination out of the county in which he resides or is served with a subpoena. § 1, c. 47, Pol.C.

§ 596. **Failure to attend and testify. Penalty.** Any person who, having been summoned in the manner above prescribed, refuses or neglects to attend and testify in obedience to such subpoena, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars to be recovered with costs of suit in a civil action in the name and for the use of the party at whose instance the subpoena was issued, and such person is also guilty of a misdemeanor. § 2, c. 47, Pol.C. am'd.

§ 597. **Depositions of nonresident witnesses may be taken.** Depositions of witnesses residing outside of the district and beyond the reach of a subpoena may be taken before any officer authorized to take testimony in a civil action. § 13, c. 47, Pol.C.

§ 598. **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 in this article, 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 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 being contested as shall be proposed by either of the parties or attorneys. § 14, c. 47, Pol.C.

§ 599. **Testimony must be confined to issue.** The testimony to be taken by either party to such contest shall be confined to the issues raised by the notice of contest and answer thereto. § 15, c. 47, Pol.C. am'd.

§ 600. **Testimony must be reduced to writing.** 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 attorneys, if in attendance, and each witness shall sign his name at the end of his testimony. § 16, c. 47, Pol.C. am'd.

§ 601. **Production of papers may be required.** 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 papers in his possession pertaining to such election, or to produce certified or sworn copies of the same in case they are official papers, such person shall be liable to all the penalties prescribed in section 596. 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 state for the use of the legislative assembly. § 17, c. 47, Pol.C.

§ 602. **Adjournments.** The taking of the testimony may, if so stated in the notice, be adjourned from day to day. § 18, c. 47, Pol.C.

§ 603. **Papers to be attached to deposition.** The notice to take depositions with the proof or admission of 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, which shall be annexed to the deposition taken and transmitted with them to the secretary of state. § 19, c. 47, Pol.C.

§ 604. **Testimony to be forwarded to the secretary of state.** All officers taking testimony to be used in a contested election case shall, when the taking of the same is completed, immediately certify to the same as required by law in other cases, and inclose the same in a sealed envelope and after indorsing on such envelope § 20, c. 47, Pol.C. am'd.

the title of the contest forward the same by mail to the secretary of state; and the secretary of state is authorized to open the same at the instance of either party or his attorney.

§ 21, c.47, Pol.C.
am'd.

§ 605. Fees of officers and witnesses. Each witness attending in obedience to a subpoena as herein provided and all officers employed in taking testimony in such contested election cases 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 services in civil actions in courts of record in this state.

§ 22, c.47, Pol.C.

§ 606. No legislative expense. No payment shall be made by the legislative assembly out of its contingent fund or otherwise to either party to such contest for expenses incurred in prosecuting or defending the same.

ARTICLE 15.—REGISTRATION OF VOTERS.

§ 1, c. 122, 1881.
am'd.

§ 607. Registration of voters. When board shall meet.

The persons authorized by law or appointed pursuant to any village or city ordinance to act as judges of election in any village, city, ward or other election precinct in this state shall, together with the inspector of election for such precinct, constitute a board of registry for their respective precincts, and they shall meet on Tuesday, two weeks preceding any general election, at nine o'clock A. M., and make a list as hereinafter prescribed of all persons qualified to vote at the ensuing election in such election precinct, which list when completed shall constitute and be known as the register of electors of such precinct.

§ 2, c. 122, 1881.
am'd.

§ 608. Registers, what to contain. Such registers shall each contain a list of the qualified electors of such precinct, alphabetically arranged according to their respective surnames, so as to show in one column the name at full length, and in another column the residence by the number of the dwelling, if there is a number, and the name of the street or other location of the dwelling place of each elector. It shall be the duty of such board to enter in such lists the names of all persons residing in its election precinct whose names appear on the poll list made in such precinct at the last preceding election, the number of the dwelling and name of the street or other location, if the same is known to or can be ascertained by such board, and for this purpose the board is authorized to take from the office in which it is filed the poll list made and filed by the judges or inspector of such precincts at the election held next prior to the making of such register. In making such register the board shall enter therein, in addition to the names on the poll list, the names of all other persons who are known to them to be qualified electors in such precinct, or shall be proved to be qualified electors by the oath of the person applying to be registered, or by the oath of some elector whose name has been already 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. Such board shall complete as far as practicable such register on the day of their meeting aforesaid, and shall make two copies thereof and certify the register and each of the copies to be a true list of the voters in its precinct so far as the same are known, within ten days thereafter; such original list, together with the list taken from the office aforesaid, shall be filed with the board and shall be kept by one of the judges or by the inspector and

carefully preserved for its use on the day hereinafter mentioned for the revision and correction of the same. One copy of such list shall immediately after its completion be posted in some public and conspicuous place at or near the place where the last preceding election in such precinct was held, and be accessible to any elector who may desire to examine the same or make copies thereof. Any person who shall tear down, deface or destroy any list so posted is guilty of a felony and shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the penitentiary not exceeding five years.

§ 609. Registry list in new precinct. In case any election precinct shall be formed by the organization of a new precinct or by division of any village, ward or precinct, or the incorporation of a city or village, the judges or the inspector of elections in the new precinct thus formed, may make a registry of electors on the day prescribed by this article in such manner as a majority of them may direct, and for this purpose they may make a list or cause to be made a certified copy of the poll list or lists of the precinct or precincts in which such new precinct was situated, or they may dispense with such list and proceed to make a register of electors from the best means at their command. Such list shall only embrace the names of such persons as are known to them to be electors in their precinct or proved to be such by the oath of an elector whose name has already been entered upon such register, or by the oath of the applicant; and such list shall be preserved and a copy posted up as prescribed in the preceding section and shall be revised and corrected in the same manner as other lists are corrected. § 3, c. 122, 1881.
am'd.

§ 610. Board of registration, second meeting. Such boards shall again meet on Tuesday of the week preceding such election in their respective election precincts at the place designated for holding the polls for the purpose of revising, correcting and completing such lists, and for this purpose they shall meet at 8 o'clock A. M. and remain in session until eight o'clock P. M. § 4, c. 122, 1881.

§ 611. Proceedings of board to be public. The proceedings of such board shall be open, and all persons residing and entitled to vote in such precincts shall be entitled to be heard by such board in relation to corrections or additions to such register, and the judges or the inspector are empowered to administer oaths for this purpose. One of the lists so kept by the judges or inspector as aforesaid shall be used by them on the day of making corrections or additions for the purpose of completing the registry of such precinct. § 6, c. 122, 1881.

§ 612. Registry list to be revised. It shall be the duty of such board at its meeting for revising and correcting such lists to erase therefrom the name of any person inserted therein who shall be proved by the oath of two legal voters of such precinct to the satisfaction of such board to be nonresidents of such precinct or otherwise not entitled to vote therein at the election then next to be held. Any elector residing in such precinct and entitled to vote therein may appear before such board and require his name to be recorded in such list. Any person requiring his name to be recorded shall make the same statement as to street and number thereof and where he resides which is required by the provisions of this article of persons offering their votes at the polls, and shall be subject to the same penalties for refusing to give such information or for falsely giving the same, and shall also be subject to challenge either by the judges § 7, c. 122, 1881.

or the inspector or by any elector whose name appears on such list, and the same oath may be administered by the judges or inspector or other duly authorized person as is provided in case of persons offering to vote at an election; and in case no challenge is made to any person requiring his name to be registered or in case of challenge, if such person makes oath as aforesaid, then the name of any such person shall be added to such list.

§ 8. c. 122, 1881.

§ 613. Receiving vote from person not on registry list. After such lists shall have been fully completed, such board shall within two days cause two copies of the same to be made, each of which shall be certified by it to be a correct list of the qualified electors of the precinct so far as known, which list the judges or inspector shall carefully keep and preserve for use on election day; and at the opening of the polls the judges or inspector shall designate two of their number to check the name of each voter voting in such precinct whose name is on the register. No vote shall be received at any election in this state if the name of the person offering such vote is not on the register, unless such person shall furnish to the judges of election his affidavit, stating therein that he is a resident of such precinct, giving his place of residence and length of time he has resided there, and also prove by the oath of a householder and registered voter of the precinct that he knows such person to be a resident therein, giving his place of residence. Such oath may be administered by the inspector or one of the judges of election, or any other person authorized to administer oaths, but no person shall receive any compensation for administering such oath. Such oath shall be preserved and filed by the judges of election. Any person may be challenged and the same oath required as is now or hereafter may be prescribed by law.

§ 9. c. 122, 1881.
am'd.

§ 614. Duty of clerks of election. The clerks of election in each precinct shall enter on the poll list kept by them in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute heretofore required of the board in making the registry; but such entry shall not be made by them if the register correctly contains the name and residence of such voter; and in all cases such clerk shall enter in a column opposite the name of each person not registered the words "not registered." And the clerks in case the name of such voter is not registered shall enter in the appropriate columns of the poll list the name and residence as in other cases. Any person making a false statement as to his residence or dwelling place shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or imprisonment in the penitentiary not exceeding two years, at the discretion of the court.

§ 10. c. 122, 1881.

§ 615. Register must be filed. Within three days after the canvass of the votes the register so kept and checked as aforesaid shall be filed with the county auditor of the county in which such precinct is situated, and shall be retained and carefully preserved therein as a public record.

§ 11. c. 122, 1881.
am'd.

§ 616. Registers to remain public record. Such registers shall at all times be open to public inspection without charge.

§ 12. c. 122, 1881.

§ 617. Compensation of members of board of registry. The members of the board of registry shall receive the same compensation as is now or may hereafter be allowed by law, not to exceed two dollars per day.

§ 618. Board has power to preserve order. The members of such board shall have and exercise the same powers in preserving order at their meetings under this article as are given to judges of election for preserving order on election day, and vacancies may be filled in such board in the same manner as vacancies of judges are now filled at elections. § 13, c. 122, 1881.

§ 619. Penalty for registering in more than one precinct. 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 that he is not a qualified voter in the precinct where such registry is made, or who shall falsely personate any registered voter, and any person aiding or abetting any person in any manner in either of such acts, shall be punished for each and every offense by imprisonment in the penitentiary for not less than two nor more than five years. If any member or officer of such board shall willfully violate any of the provisions of this article, or be guilty of any fraud in the execution of the duties of his office, he shall be punished by imprisonment in the penitentiary for a period not exceeding two years. § 14, c. 122, 1881.

§ 620. County auditor to provide blank registers and blanks. The county auditors shall provide the board of registry of the several precincts within their respective counties with the necessary blank registers and blanks at the expense of their respective counties. § 1, c. 48, 1887.

§ 621. What cities governed by this article. All cities and villages containing one thousand or more inhabitants shall be subject to the provisions of this article. To determine the number of inhabitants the number of votes cast at the last preceding general election shall be multiplied by five. § 1, c. 48, 1887, am'd.

CHAPTER 9.

EDUCATION.

ARTICLE 1. — SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 622. Qualifications. Term of office. There shall be elected by the qualified electors of the state at the time of choosing members of the legislative assembly a superintendent of public instruction, who shall have attained the age of twenty-five years, and who shall have the qualifications of an elector for that office and the holder of a state certificate of the highest grade, issued in some state, or a graduate of some reputable university, college or normal school. He shall hold his office at the seat of government for the term of two years commencing on the first Monday in January following his election and until his successor is elected and qualified. § 1, c. 62, 1890.

§ 623. To preserve miscellaneous documents. He shall preserve in his office all books, maps, charts, works on education, school reports and school laws of other states, and cities, plans for school buildings and other articles of educational interest and value which may come into his possession as such officer, and at the expiration of his term he shall deliver them together with the reports, statements, records and archives of his office to his successor. § 2, c. 62, 1890.

§ 3, c. 62, 1890.
§ 1, c. 56, 1891.

§ 624. Supervision of schools. He shall have the general supervision of the public schools of the state and shall be ex officio member of the board of university and school lands and of the normal school boards of the state.

§ 4, c. 62, 1890.
§ 2, c. 56, 1891.

§ 625. Prepare and furnish school supplies. He shall prepare, cause to be printed and furnished to the proper officer or persons all school registers, reports, statements, notices and returns needed or required to be used in the schools or by the school officers in the state. He shall prepare and furnish the school offices, through the county superintendents, lists of publications approved by him as suitable for district libraries; such lists shall also contain the lowest price at which each publication can be purchased, and such other information relative to the purchase of district libraries as he may deem requisite.

§ 5, c. 62, 1890.

§ 626. Examinations and teachers certificates. He shall prepare or cause to be prepared all questions to be used in the examination of applicants for teacher's certificates, prescribe the rules and regulations for conducting such examinations and issue or revoke state certificates as provided in this chapter.

§ 6, c. 62, 1890.

§ 627. Prescribe course of study. He shall prepare and prescribe a course of study for all the public and normal schools of the state and the course of study, training and practice of the professional department of schools, designated and supported wholly or in part by the state.

§ 7, c. 62, 1890.
§ 3, c. 56, 1891.

§ 628. Rules for teachers' institutes. He shall prescribe rules and regulations for the holding of teachers' institutes, and, after counseling and advising with county superintendents, shall appoint conductors therefor. He shall prescribe the course of instruction for teachers' institutes, and the course of reading for the teachers' reading circles within the state.

§ 8, c. 62, 1890.
§ 4, c. 56, 1891.

§ 629. Advise county superintendents. He shall counsel with and advise county superintendents upon all matters involving the welfare of schools and he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decision of the county superintendents, and may for such decisions require affidavits, verified statements or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced rules of practice and regulations pertaining to the hearing and determination of appeals, and necessary for carrying into effect the school laws of the state.

§ 9, c. 62, 1890.

§ 630. Record of official acts. He shall keep a complete record of all his official acts and shall file in his office all appeals and the papers pertaining thereto.

§ 10, c. 62, 1890.

§ 631. School laws to be printed. He shall at least once in two years cause to be printed the school laws of the state, with such notes and decisions thereon as may seem to him advisable, and shall furnish them as they are needed to the school officers in the state.

§ 11, c. 62, 1890.
am'd.

§ 632. Conference with county superintendents. He shall meet the county superintendents of each judicial district or of two or more districts combined at such time and place as he shall appoint, giving them due notice of such meeting. The objects of such meeting shall be to accumulate valuable facts relative to schools, to compare views, to discuss principles, to hear discussions and suggestions relative to the examinations and qualifications of teachers

methods of instruction, text books, institutes, visitation of schools and other matters relating to the public schools.

§ 633. **Seal.** He shall provide and keep a seal by which all his official acts may be authenticated. § 12, c. 62, 1890. am'd.

§ 634. **To assist at teachers' institutes.** He shall, when practicable, attend and assist at teachers' institutes and aid and encourage generally teachers in qualifying themselves for the successful discharge of their duties; he shall labor faithfully in all practicable ways for the welfare of the public schools of the state, and shall perform such other duties as shall be required of him by law. § 13, c. 62, 1890.

§ 635. **Biennial report, what to contain.** He shall, on or before the first day of November preceding the biennial session of the legislative assembly, make and transmit to the governor a report, showing: § 14, c. 62, 1890. am'd.

1. The number of school districts, schools, teachers employed and pupils taught therein and the attendance of pupils and studies pursued by them.

2. The financial condition of the schools, their receipts and expenditures, value of school houses and property, cost of tuition and wages of teachers.

3. The condition, educational and financial, of the normal and higher institutions connected with the school system of the state and as far as it can be ascertained, of the private schools, academies and colleges in the state.

4. Such general matters, information and recommendations relating to the educational interests of the state, as he may deem important.

§ 636. **Reports to be printed.** One thousand copies of the report of the superintendent of public instruction shall be printed biennially in the month of December preceding the session of the legislative assembly. One copy shall be furnished to each of the members of the legislative assembly, one copy to each county superintendent of the state, one copy to the president of each school board, one copy to each state officer, one copy to each state and territorial superintendent and twenty copies shall be filed in the office of the superintendent of public instruction and ten copies in the state library. The remaining copies shall be distributed among the various colleges, university and other libraries of the United States. § 15, c. 62, 1890. am'd.

§ 637. **Salary, traveling expenses.** He shall receive an annual salary of two thousand dollars and in addition thereto his actual and necessary traveling expenses incurred in the discharge of his official duties, not exceeding six hundred dollars in any one year, such expenses to be paid monthly on the warrant of the state auditor upon his filing with such auditor an itemized statement of such expenses properly verified. § 16, c. 62, 1890. am'd.

ARTICLE 2.—COUNTY SUPERINTENDENT OF SCHOOLS.

§ 638. **Election. Term of office.** There shall be elected in each organized county at the same time other county officers are elected a county superintendent of schools, whose term of office shall be two years commencing on the first Monday in January following his election and until his successor is elected and qualified. § 17, c. 62, 1890. am'd.

§ 20, c. 62, 1890. **§ 639. General duties.** The county superintendent of schools shall have the general superintendence of the public schools in his county, except those in cities which are organized under special law and those in special or independent school districts.

§ 21, c. 62, 1890. **§ 640. Visitation of schools.** He shall visit each public school under his supervision. He shall at such visit carefully observe the condition of the school, the mental and moral instruction given, the methods of teaching employed by the teacher, the teacher's ability and the progress of the pupils. He shall advise and direct the teacher in regard to the instruction, classification, government and discipline of the school and the course of study. He shall keep a record of such visits and by memoranda indicate his judgment of the teacher's ability to teach and govern and the condition and progress of the school, which shall be open to inspection by any school director.

§ 22, c. 62, 1890.
§ 5, c. 56, 1891. **§ 641. General duties continued.** He shall carry into effect all instructions of the superintendent of public instruction given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished him by such superintendent, and needed by such officers and teachers. Acting under the instructions of the superintendent of public instruction, he shall convene the teachers of his county at least one Saturday in each month during which the public schools are in progress, or if the distance is too great, he may convene the teachers of two or more districts in each of the several portions of his county in county or district institutes, or teachers' circles for normal instruction and the study of methods of teaching, organizing, classifying and governing schools, and for such other instruction as may be set forth in the course of reading prescribed by the superintendent of public instruction for the state teachers' reading circle. Each teacher shall attend the full session of such institute or circle and participate in the duties and exercises thereof or forfeit one day's wages for each day's absence therefrom, unless such absence is occasioned by sickness of the teacher or others to whom his attention is due; but when on account of distance or otherwise it would impose a hardship upon any teacher to attend, or would cause such teacher to neglect his school, the county superintendent may excuse such teacher from attendance.

§ 23, c. 62, 1890. **§ 642. Record of official acts.** He shall keep a record of all his official acts and shall preserve all books, maps, charts and apparatus sent him as a school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards and shall turn them over to his successor in office.

§ 24, c. 62, 1890.
§ 6, c. 56, 1891. **§ 643. Meetings with school officers.** He may arrange for meetings with school officers at designated times and places, due notice of which has been given, for the purpose of inspecting the district records and instructing in the manner of keeping the same and of preparing the reports of district officers. He shall visit the officers of the several school districts as often as may be necessary to secure the correct keeping of the records. He shall, on or before the first day of April in each year, prepare and furnish to the several assessors of the county a correct sectional map of their respective districts, showing the boundaries and names or numbers of all school districts therein.

§ 25, c. 62, 1890. **§ 644. To decide questions in controversy.** He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decisions of

school officers or boards. An appeal may be taken from his decision to the superintendent of public instruction, in which case a full written statement of the facts, together with the testimony and his decision in the case shall be certified to the superintendent of public instruction for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the courts.

§ 645. Power to administer oaths. He shall have power to administer oaths of office to all subordinate school officers, and to witnesses and to examine them under oath in all controversies pending before him arising in the administration of the school laws; but he shall not receive pay for administering such oaths.

§ 26, c. 62, 1890.
am'd.

§ 646. Institute fund, how raised and used. All fees received by him for the examination of teachers shall be turned over to the county treasurer, who shall keep the same as a special fund to be known as the "institute fund" and which shall be used only for the expenses of holding county teachers' institutes, to be paid out upon proper warrants issued by the county auditor upon the sworn and itemized voucher of the county superintendent.

§ 27, c. 62, 1890.

§ 647. Apportionment of state tuition fund. He shall make apportionment of the state tuition fund among the school corporations of the county, as provided in this chapter.

§ 28, c. 62, 1890.

§ 648. Teacher's certificate may be revoked, when. He shall see that the pupils are instructed in the several branches of study required by law to be taught in the schools as far as they are qualified to pursue them. If any teacher neglects or refuses to give instruction as required by law in physiology and hygiene, and the nature and effect of alcoholic drinks, narcotics and stimulants, the county superintendent shall promptly revoke such teacher's certificate and cause him to be discharged. If the teacher, so neglecting or refusing to give instructions in such branches, holds a state certificate, the county superintendent shall immediately certify such refusal or neglect to the superintendent of public instruction.

§ 29, c. 62, 1890.

§ 649. Report to state superintendent. He shall, on or before the fifteenth day of August in each year, make and transmit a report to the superintendent of public instruction, containing such statistics, items and statements relative to the schools of the county, as may be required by such superintendent. Such report shall be made upon and conform to the blanks furnished by the superintendent of public instruction for that purpose. He shall not be paid his salary for the last quarter of his official year, until he presents to the county commissioners, the receipt of the superintendent of public instruction for such annual report.

§ 30, c. 62, 1890.
am'd.

§ 650. Appraisement of school lands. Fees. He shall perform such duties as appraiser of the school lands in his county, and also in the leasing and sale of such lands, as may be required of him by the board of university and school lands. He shall be paid for such services three dollars a day for the time actually employed therein and five cents a mile for the distance actually and necessarily traveled in the discharge of such duties, to be paid by the state treasurer out of the funds appropriated for the current expenses of the board of university and school lands.

§ 31, c. 62, 1890.
am'd.

§ 651. Office, postage and stationery. He may provide for himself a suitable office for the transaction of official business when not provided therewith by the county commissioners, and such commissioners shall audit and pay his reasonable accounts for the use and

§ 32, c. 62, 1890.
§ 7, c. 56, 1891.

furniture of such office. They shall also furnish him with all necessary books, stationery and postage; but not more than one hundred and twenty-five dollars a year shall be paid by any county for office rent, books, stationery, postage and furniture, and when an office room is furnished by the county he shall not be allowed to exceed fifty dollars a year for stationery and postage.

§ 33, c. 62, 1890.
§ 1, c. 58, 1893.

§ 652. Salary. Deputy. Traveling expenses. The salary of the county superintendent of schools shall be as follows: In each county having one school and not over five, one hundred dollars; six schools and not over ten, two hundred dollars; eleven schools and not over fifteen, three hundred dollars; sixteen schools and not over twenty, four hundred dollars; twenty-one schools and not over twenty-five, five hundred dollars; twenty-six schools and not over thirty, six hundred dollars; thirty-one schools and not over thirty-five, seven hundred dollars; thirty-six schools and not over forty, eight hundred dollars; forty-one schools and not over fifty, nine hundred dollars; and for each additional ten schools or major fraction thereof, one hundred dollars additional; provided, that in computing the salary of such superintendent no school shall be included unless the same shall have been taught at least three months during the preceding year; provided, further, that such salary shall not exceed fifteen hundred dollars in any county. In addition thereto he shall receive seven cents a mile for the distance actually and necessarily traveled by him in the discharge of his duties. He shall at the end of every three months make and furnish to the county commissioners an itemized statement of the distance so traveled in the discharge of his duties, which shall be audited and ordered paid by the board of county commissioners. The amount of his salary shall be determined each year by the actual number of schools or separate departments in graded schools over which such superintendent had official supervision during the preceding year, and the same shall be paid out of the county general fund monthly upon the warrant of the county auditor. In each county which shall be organized for school purposes after the adoption of this code, the county superintendent shall be paid a salary at the rate of one hundred dollars a year until the first Monday in October next following his election, after which his salary shall be as provided for in this section. The county superintendent may appoint a deputy who shall perform the duties of the county superintendent during his absence from the county; but no additional salary shall be paid such deputy, except in counties having eighty or more schools, in which counties the board of county commissioners may appropriate not to exceed one hundred dollars each year for clerical assistance in the office of the county superintendent, but such deputy shall be paid seven cents a mile for the distance actually and necessarily traveled by him, to be paid in the same manner the county superintendent is paid. The county superintendent shall be responsible for the official acts of such deputy.

§ 34, c. 62, 1890.

§ 653. Qualifications of. No person shall be deemed qualified for the office of county superintendent, unless he holds a certificate of the highest county grade or its equivalent.

§ 1, c. 46, 1895.

§ 654. Shall not engage in teaching. No county superintendent of schools, except as hereinafter provided, shall engage in teaching during the term for which he was elected, nor shall any person under contract to teach be qualified to hold the office of county superintendent of schools.

§ 655. Shall not absent himself from county. No county superintendent of schools shall engage in any profession or occupation, nor shall he absent himself from the county or district for which he is elected to engage in any occupation, profession or pursuit during the term for which he is elected for such time and in such manner as to interfere with the proper discharge of his duties as county superintendent of schools. § 2, c. 46, 1895.

§ 656. Subject to removal. Any county superintendent of schools who neglects or violates any of the provisions of sections 654 and 655 shall be subject to removal from office. § 3, c. 46, 1895.

§ 657. Not applicable in every county. None of the provisions of sections 654 and 655 shall be applicable to counties in which the salary of county superintendents of schools is less than twelve hundred dollars per annum. § 4, c. 46, 1895.

ARTICLE 3.—SCHOOL DISTRICTS.

§ 658. What constitutes a school corporation. Each civil township in the state, not organized for school purposes under the district system at the taking effect of this code, shall be and is hereby constituted a distinct school corporation, and whenever in any county a civil township shall hereafter be organized it shall from and after such organization be and constitute a distinct school corporation, except as otherwise specially provided in this chapter. § 35, c. 62, 1890.

§ 659. School township to conform to civil township when possible. Each school township in every county in the state, which at the taking effect of this code consists of territory not organized into a civil township, shall be and remain a distinct school corporation; provided, that whenever such school township, or any part thereof, shall be organized into or annexed to a civil township, such civil township shall thenceforth constitute a distinct school corporation; but nothing in this section shall be construed to alter the boundary lines of any school township organized prior to the passage of this code, except upon petition as hereinafter provided. § 36, c. 62, 1890.

§ 660. What territory may be organized into district school corporations. The county commissioners of each county, not organized for school purposes under the district school system at the taking effect of this code, shall organize into a distinct school corporation any territory not, at the taking effect of this code, already organized into a civil township or a school township, upon being petitioned so to do by one-third of the residents of such territory, having the care and custody of any child of school age; provided, such territory shall consist of not less than one congressional township, having at least eight thousand dollars of taxable property and at least ten children of school age residing therein. The county commissioners of every such county, with the advice and consent of the county superintendent, may rearrange the boundaries in any school corporation whose territory is not included within a civil township, when petitioned so to do by a majority of the voters residing within such school corporation, whose boundaries will be affected thereby, subject to the same restrictions and conditions as to extent of territory, value of taxable property and number of resident children of school age as in the organization of a school corporation from territory not included in a civil township. In the formation of school corporations and the rearrangement of their boundaries as provided § 37, c. 62, 1890.
§ 38, c. 56, 1891.

for in this section, the boundary lines of congressional townships shall be followed as far as possible as school corporation lines.

§ 39, c. 62, 1890.

§ 661. New school districts, how formed. In any county hereafter organized the county commissioners shall so divide the county or the parts thereof, which include every congressional township in such county which has residing therein not less than ten children of school age, into school corporations as will best promote the permanent interests of public schools in the county, upon the same petition and subject to the same condition and restrictions as are contained in section 660.

§ 39, c. 62, 1890.

§ 662. When school corporations may be divided and attached to other districts. If a portion of any such school corporation having not more than ten children of school age residing therein is separated from the other portion of such corporation by any natural obstacle which practically prevents such children from attending school in such other portion, the county commissioners of the county may annex such portion so separated to an adjoining school corporation, and the portion so annexed shall constitute a part of such adjacent corporation. If such adjacent corporation lies in another county, the county commissioners of the two counties may jointly make such annexation.

§ 40, c. 62, 1890.
§ 9, c. 56, 1891.

§ 663. Annexation of school corporations. In any county not organized for school purposes under the district system at the taking effect of this code, if a town or village not organized into a special district is divided by a civil township line or if such town or village is divided by any county line, the county commissioners of such county, or the county commissioners of such adjacent counties acting in joint session, as the case may be, may when petitioned so to do by a majority of the voters of each part of said town or village, annex one part of such town or village to the adjacent school corporation which includes the other part of such town or village and the part so annexed shall constitute a portion of such adjacent corporation.

§ 42, c. 62, 1890.

§ 664. When civil townships may consolidate into school district. In any county not organized for school purposes under the district system at the taking effect of this code, if a civil township having less than fifteen persons of school age residing therein, by reason of the irregular course of natural boundary, contains less than twelve sections or square miles of territory, it shall constitute a portion of the adjacent school district with which it has the longest common boundary line.

§ 43, c. 62, 1890.

§ 665. School districts, how named. Each school corporation constituted or formed under the provisions of this article, shall be designated a school district as distinguished from a civil township or congressional township and shall be named as follows: Each school district which consists of a civil township shall be named "..... school district of county, state of North Dakota," with the name of the civil township which constitutes the districts inserted in the blank before the word "school" and the name of the county in which it is situated inserted before the word "county." Each school district which consists 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." Each school district consisting of territory not organized into a civil township which has no distinctive name shall be named "school district No. of county, state of North

Dakota," with its proper number inserted in the blank after the word "number" and the proper name of the county inserted in the blank before the word "county;" provided, that in each county organized for school purposes under the district system at the taking effect of this code, the several school districts shall retain and be known by the number which they have respectively at the time of the taking effect of this code and any school district hereafter formed in any such county shall be known by the number next higher than that of the highest pre-existing numbered district.

§ 666. When boundaries to be rearranged and established and how. The county commissioners and county superintendent of schools in each county, which at the taking effect of this code, is organized for school purposes under the district system, shall meet on the first Monday in May, A. D. 1896, at the place where the meetings of such commissioners are usually held and shall rearrange and establish the boundaries of the several school districts of the county unless the same has already been done, as follows: § 44, c. 62, 1890.

1. Each civil township in a county, no part of which is included in a school district already organized, shall be formed into a single school district.

2. Each congressional township in the county, no part of which is included in a civil township nor in an organized school district, if it contains twelve or more persons of school age, shall be formed into a single school district.

3. All territory in a county situated in a civil township, part of which is organized into a school district or situated in a congressional township not included in a civil township, and a portion of which is organized into a school district shall be annexed to and form a part of the organized school district lying wholly or in part in such civil or congressional township.

4. Each school district now organized which has less than ten persons of school age residing therein shall be annexed to and form a part of such adjacent school district as shall be most convenient for such persons of school age, when in the judgment of such commissioners and superintendent such annexation can be made without detriment to the school or to the pupils residing in such district.

5. The boundary lines of each school district which lies partly within two or more civil townships shall be so changed that such school district shall lie wholly within one civil township, so far as in the judgment of such commissioners and superintendent such change can be made without detriment to the schools or to the pupils therein.

6. Such commissioners and superintendent shall make such changes generally in the boundary lines of the school districts of the county, not in their judgment detrimental to the interests of the schools of the county, as will reduce the number of school districts in the county, and form school districts not extending beyond the boundaries of the civil township.

§ 667. Boundaries, how changed in future. After the boundary lines of the several school districts in any of the counties are rearranged and established as provided for in the last section, or at any time thereafter, such boundary so established, or any boundary rearranged and established as aforesaid, may be changed by the county commissioners and superintendent of schools of such county at a regular meeting of the board, upon petition of three-fourths of the resident voters in and of the parts of districts to be included in any new § 45, c. 62, 1890.
§ 1, c. 59, 1893.

districts, or of the parts of districts desiring such change; provided, that there are at least twelve children of school age within the boundaries proposed to be benefited by such change or creation of a new district, and it shall appear to the satisfaction of a majority of such board and to the county superintendent that such change will be beneficial to the schools and to the public; and provided further, that each congressional township not wholly or in part included in a civil township, and no portion of which is organized for school purposes, shall be formed into a school district as soon as it shall have residing therein twelve or more children of school age.

§ 46, c. 62, 1890. **§ 668. Rights and powers of school corporations.** Each school district constituted and formed as provided in this article shall be a distinct corporation, and under its proper name or number as such corporation, may sue and be sued, contract and be contracted with, and may acquire, purchase, hold and use personal or real property for school purposes or for the purposes mentioned in this chapter and sell and dispose of the same.

§ 47, c. 62, 1890. **§ 669. Plats of school districts to be furnished by county auditor.** The county auditor shall, within thirty days after the first school election held as provided herein, transmit to the state auditor, to the superintendent of public instruction and to the county superintendent, a plat of the county showing the boundaries and name of each school corporation therein, and shall record a copy of the same together with all proceedings of the county board had and done under this chapter in a proper book kept for that purpose. He shall promptly furnish such officers with a correct plat showing any changes at any time in the boundaries of school corporations. The superintendent of public instruction shall furnish instructions for the suitable preparation and construction of such plats in regard to scale and markings, in order to secure a uniform series of maps for binding for office use.

ARTICLE 4. — ELECTION OF SCHOOL OFFICERS.

§ 48, c. 62, 1890.
am'd. **§ 670. Officers to be elected.** On the third Tuesday in June of each year there shall be elected one school director for the term of three years and on the third Tuesday in June of each even numbered year a school treasurer for the term of two years. Such officers shall hold their respective offices from the second Tuesday in July following their election for the number of years respectively for which they were elected, and until their successors are elected and qualified. At the first election for the organization of a new school district there shall be elected at large for such school districts three directors, one to serve until the first annual election, one to serve until the second annual election, and one to serve until the third annual election thereafter and a school treasurer to serve until the annual election in the next even numbered year and until his successor is elected and qualified.

§ 49, c. 62, 1890.
am'd. **§ 671. Polling places, how established. Appointment of election officers.** The county superintendent in each county shall at least twenty days prior to the third Tuesday in June of each year, fix and designate some polling place in each school district so located as to be convenient for the voters of such district, and shall appoint two persons to act as judges and two to act as clerks of the election of such school officers; such judges and clerks shall be qualified voters in their respective districts. The county superinten-

dent shall notify in writing such judges and clerks of their appointment, and of the place fixed and designated as the polling place in their respective districts, and shall furnish them with the necessary blanks and poll books for such election. He shall also furnish one of such clerks with three notices of such election specifying the time and place at which such election is to be held, the officers to be elected and term of each, which notices such clerk shall post in three of the most public places in the district at least ten days prior to the thirteenth day of June. The county superintendent shall fix the date and perform such other duties as devolve upon him by the provisions of this section for the first election in any school district hereafter formed under the provisions of this chapter, and such election shall be called by the county superintendent within thirty days after the formation of such school district.

§ 672. Who qualified to vote or hold office. At any election of school officers in any school corporation in this state, all persons who are qualified electors under the general laws of the state and all women twenty-one years of age having the necessary qualifications as to citizenship and residence required of male voters by law, shall be qualified voters and shall be eligible to the office of county superintendent of schools, school director or member of the board of education or school treasurer, or may be judge or clerk of such election. § 50, c. 62, 1890.

§ 673. Hours polls open. At all elections for school district officers, the polls shall be open at 2 o'clock P. M. and closed at five o'clock P. M. § 52, c. 62, 1890.

§ 674. Notice of annual election. At least fifteen days before the third Tuesday in June of each year the district school board of each school district shall designate one polling place as convenient as possible to the voters of such district at which such annual election shall be held, and shall cause notice of such election to be posted in at least three of the most public and conspicuous places within the district. Such notices shall be signed by the clerk or in his absence by the president of the district school board, and shall state the time and place of holding such election and the officers to be elected and their term of office, and shall be substantially in the following form: § 53, c. 62, 1890.
am'd.

Notice is hereby given that on Tuesday the day of June, A. D. an election will be held at (here insert polling place) for the purpose of electing (here insert officers to be elected and term each is to serve) for school district No. or for (here insert name of school district). The polls will be open at two o'clock P. M. and closed at five o'clock P. M. of that day.

By order of school board,

Signed,

clerk.

§ 675. Judges. Oath. At such annual election any two of the directors of the school district may act as judges and the clerk of the district school board and one other person to be chosen by the voters present at the opening of the polls, shall act as clerks. The voters present at the opening of the polls shall choose a person to fill any vacancy caused by the absence of either of such officers to act as judge or clerk of such election. Before opening the polls each of the judges and clerks of election shall take and subscribe the following oath or § 54, c. 62, 1890.

affirmation: "I do solemnly swear (or affirm) that I will perform my duties as judge or clerk (as the case may be) according to law and the best of my ability." Such oath or affirmation may be administered by any officer authorized to administer oaths or by either of the judges or clerks. Any school officer elected and qualified under the provisions of this chapter is authorized and empowered to administer any oath or affirmation pertaining in any manner to school offices.

§ 55, c. 62, 1890.
10, c. 56, 1891.

§ 676. Election, how conducted and votes canvassed.

Such election shall be conducted and the votes canvassed as provided by law for general elections, except as otherwise provided in this chapter. Immediately after the polls are closed the judges shall proceed to count and canvass the votes for each person voted for at such election for any office, and the person receiving the highest number of votes for the office of director or treasurer shall be declared elected. If the election results in a tie for any such office, the district clerk shall immediately notify in writing the parties having received such tie votes, and a time shall be agreed upon by the parties within three days after the election, at which the election shall be decided in the manner that may be agreed upon by the parties, in the presence of the judges and clerks of election, and a record of the proceedings shall be made in the records of the district clerk. The return of the number of votes cast for each person for county superintendent of schools, shall be signed by such judges and clerks of election sealed in an envelope and forwarded to the county auditor within five days after such election.

§ 56, c. 62, 1890.
am'd.

§ 677. Certificates of election. The clerk of the school district shall within five days after such election furnish each person elected to any district office a written notice of his election, and that he shall take the oath of office as such officer on or before the second Tuesday in July following such election. He shall also forward to the county superintendent within ten days after such election, a certified list of all the officers elected thereat.

§ 57, c. 62, 1890.
am'd.

§ 678. Oath of office. Each person elected to the office of school director or treasurer shall before entering upon the duties of his office, take and subscribe the oath prescribed in section 211 of the constitution, which oath shall be filed with the clerk of the school district board.

ARTICLE 5. — ORGANIZATION, MEETINGS AND DUTIES OF DISTRICT OFFICERS.

§ 59, c. 62, 1890.

§ 679. District school board. Quorum. The three school directors in each school district shall constitute the district school board. A majority of the board shall constitute a quorum and the agreement of a majority shall be necessary to the validity of any contract entered into by the board.

§ 60, c. 62, 1890.

§ 680. Organization. Clerk. The school board shall meet annually on the second Tuesday in July and organize by choosing one of the members president, and a competent person, not a member of the board, clerk, who shall hold his office during the pleasure of the board.

§ 61, c. 62, 1890.

§ 681. Meetings of board. Fees. The board shall on the second Tuesday in January, April, July and October of each year, hold regular meetings for the transaction of business at such hour and place as may be fixed by the board. A special meeting may be held

upon the call of the president or of the other two members. Written notice of the time and place of any special meeting shall be given to each member of the board at least forty-eight hours before the time of such meeting. Each member of the board shall be paid the sum of eight dollars per annum, less two dollars for each regular meeting which he fails to attend.

§ 682. Duties of the president. The president shall preside at all meetings of the board and shall perform such duties as usually pertain to such office and in accordance with the customary rules of order. In his absence a president pro tempore shall preside. The president shall perform such other duties as are prescribed in this chapter. § 62, c. 62, 1890.

§ 683. Duties of clerk. Compensation. The 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 and perform all other duties required by law or by the board. He shall receive such compensation as shall be fixed by the board, not less than five nor more than twenty-five dollars per annum. § 63, c. 62, 1890.

§ 684. Treasurer's bond, how approved. Vacancy, how filled. 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 conditioned for the honest and faithful discharge of his duties and 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. Such bond shall be in such sum as may be fixed by the board, but not less than double the sum to come into his hands in any one year as nearly as may be ascertained, which bond shall be signed by two or more sufficient sureties to be approved by the school board. In case the school board neglects or refuses to approve the bond of such treasurer and the sureties thereon, such treasurer may present the same to the county superintendent and serve notice thereof upon the board and due proof of such notice being made to the county superintendent, he shall unless good cause for delay appears, proceed to hear and determine the sufficiency of the bond and the sureties thereon, and may approve or disapprove the same as the facts warrant. In case a vacancy occurs in the office of district treasurer, it shall be the duty of the county treasurer of the county wherein such school district is located, upon being notified by the county superintendent or clerk of such school district that such vacancy exists, to perform the duties of treasurer of such school district until the vacancy is duly filled. § 64, c. 6, 1890.

§ 685. When additional bonds required. Whenever the amount in the hands of the treasurer or subject to his order, exceeds two-thirds of the penal sum of his bond or when in the judgment of the board or of the county superintendent the security on such bond is impaired, the board or county superintendent shall require an additional bond. If the treasurer fails for twenty days to give such additional bond the office shall be declared vacant and the vacancy shall be filled as provided in this chapter. § 65, c. 62, 1890.

§ 686. School funds, how paid out. The school treasurer shall keep such accounts and make such reports as are required of him by law, and shall publish his annual statement in a newspaper published in the nearest city or town to his district. He shall pay no money out of the school funds in his hands except upon the warrant of the school board signed by the president and counter-signed by the § 66, c. 62, 1890, 11, c. 56, 1891, am'd.

clerk. He shall pay all warrants properly drawn and signed when presented, if there is any money in his hands or subject to his order for their payment.

R 67, c. 62, 1890.
S 12, c. 56, 1891.

§ 687. Warrants to be indorsed when no funds to pay. When a warrant is presented to the treasurer for payment and there is no money in his hands or subject to his order belonging to the proper fund 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 shall 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. Each warrant thus presented and indorsed shall draw interest on the amount unpaid at eight per cent per annum from the date of such presentation and indorsement until paid; provided, that when 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.

R 68, c. 62, 1890.
S 13, c. 56, 1891.

§ 688. Warrants, what to specify. Each warrant drawn by the clerk of the board on the district treasurer must specify the purpose for which it is drawn, the fund on which it is drawn, and the person to whom payable; and no warrant shall be issued except for an indebtedness incurred prior to its issue.

§ 69, c. 62, 1890.

§ 689. Oath and bonds, where to be filed. All official oaths and bonds of school district officers shall be filed with the district clerk, who shall immediately certify to the county superintendent the fact of such oaths and bonds being filed. In case of the breach of any of the conditions of the treasurer's bond, the board, through its president, and in case of his refusal so to do, the county superintendent shall cause an action to be commenced and prosecuted thereon in the corporate name of the district, and any money collected for the district shall be paid to the district treasurer and any money collected for fines shall be paid into the county treasury and be credited to the general school fund of the state. If the board and county superintendent both fail or refuse to bring such action any taxpayer in the district may commence and prosecute such action, and the necessary expense thereof shall be paid out of the district treasury unless otherwise ordered by the court.

§ 70, c. 62, 1891.

§ 690. Salary of school treasurer. The school treasurer shall be paid for his services such sum as shall be fixed by the board not less than five nor more than twenty-five dollars per annum.

ARTICLE 6.—POWERS AND DUTIES OF DISTRICT SCHOOL BOARDS.

§ 71, c. 62, 1891.

§ 691. General powers. The district school board shall have the general charge, direction and management of the schools of the district, and the care, custody and control of all the property belonging to it, subject to the provisions of this chapter.

§ 692. **Power to establish schools.** It shall organize, maintain and conveniently locate schools for the education of children of school age within the district, and change or discontinue any of them in the cases provided by law. § 72, c. 62, 1890.

§ 693. **Repairs, fuel and supplies.** It shall make all necessary repairs to the school houses, outbuildings and appurtenances, and shall furnish fuel and all necessary supplies for the schools. § 73, c. 62, 1890.

§ 694. **Furniture, maps, registers, school library.** It shall furnish to each school all necessary and suitable furniture, maps, charts and apparatus, including Webster's International Dictionary. The school registers and all school blanks used shall be those furnished by the state department of public instruction. It shall have power to purchase and keep for the use of the inhabitants of the school district a circulating library of the value of not more than fifty dollars, to be selected by the school board from any list of books approved by the superintendent of public instruction, and furnished to the county superintendents for that purpose, and it shall not purchase any books not contained in such list. With the consent of a majority of the voters of the district at a meeting duly called for that purpose, due notice of which has been given as provided by law for other meetings of the voters of the school district, the district school board may purchase and select a library of the value of more than fifty dollars but not to exceed one hundred dollars in value. It shall have the care and custody of the library and may appoint as librarian any suitable person including one of their own number. It shall make rules to govern the circulation and care of the books while in the hands of pupils or other persons and may impose and collect penalties for injuries done to any book by the act, negligence or permission of the person who takes the same or while in his possession. No book shall be loaned for a longer period than two weeks at any time to any one person and never to any person not a resident of the district. The library shall be open at least once each week for the accommodation of its patrons. It shall, under proper rules, permit teachers to take books from the library to their schools for use in illustrating any subject and for instruction. It may at any time exchange any part or all of its library with any other district or person, so far as different books may be so obtained, for equal values of the books exchanged, and may at any time accept donations of books for the library; but it shall exclude therefrom all books unsuited to the cultivation of good character and good morals and manners, and no sectarian publications devoted to the discussion of sectarian differences and creeds shall be admitted to the library. 74, c. 62, 1890.
14, c. 56, 1891.
am'd.

§ 695. **Teachers, how employed. Salaries, how graded.** It shall employ the teachers of the school district, and may dismiss a teacher at any time for plain violation of contract, gross immorality or flagrant neglect of duty. No person shall be permitted to teach in any public school who is not the holder of a teacher's certificate or a permit to teach, valid in the county or district in which such school is situated; and every contract for the employment of a teacher must be in writing, and such contract must be executed before such teacher begins to teach in such schools. It shall grade the salaries of teachers for the district in accordance with the grades of certificates, and no teacher holding a certificate of a lower grade shall be paid a salary equal to or in excess of that paid to a teacher holding a certificate of a higher grade in the same district. 75, c. 74, 1890.
13, c. 56, 1891.
am'd.

- § 76, c. 62, 1890. **§ 696. Pupils from other districts.** It shall have power to admit to the schools in the district, pupils from other districts when it can be done without injuring or overcrowding such schools, and shall make regulations for their admission and the payment of their tuition. It shall have power to arrange with the board of an adjacent district for sending to such district such pupils as can be conveniently taught therein, and for paying their tuition. It 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 and their transfer from one school to another.
- § 77, c. 62, 1890. **§ 697. Rules. Suspension of pupils.** It shall assist and co-operate with teachers in the government and discipline of the schools, and may make proper rules and regulations therefor. It may suspend or expel from school any pupil who is insubordinate or habitually disobedient, but such suspension shall not be for a longer period than ten days nor such expulsion beyond the end of the current term of school.
- § 78, c. 62, 1890. **§ 698. Branches of study.** Subject to the approval of the county superintendent, it shall have power to determine what branches, if any, in addition to those required by law shall be taught in any school of the district.
- § 79, c. 62, 1890.
§ 16, c. 56, 1891. **§ 699. Tax levy. Notice to county auditor.** It shall have power to levy upon the property in the district a tax for school purposes of not exceeding thirty mills on the dollar in any year, which levy shall be made by resolution of the board prior to the twentieth day of July. The clerk shall immediately thereafter notify in writing the county auditor of the amount of tax so levied. It shall not have power to abate or reduce the amount of tax so levied after the county auditor has been notified of the amount of such levy.
- § 80, c. 62, 1890. **§ 700. When school houses can be used for other purposes.** It may permit a school house, when not occupied for school purposes, to be used under careful restrictions for any proper purpose, giving equal rights and privileges to all religious denominations or political parties, but for any such use or privilege it shall not be at any cost for fuel or otherwise to the district. Nor shall any furniture which is fastened to the floor be removed, and whoever removes any school furniture for any other purpose than repairing the same or for repairing the school room shall be guilty of a misdemeanor and shall be fined not less than five nor more than ten dollars for each offense. All fines imposed and collected under the provisions of this section shall be paid into the general school fund of the state.
- § 81, c. 62, 1890.
§ 17, c. 56, 1890.
am'd. **§ 701. School houses and sites, how determined.** Whenever in the judgment of the board it is desirable or necessary to the welfare of the schools in the district or to provide for the children therein proper school privileges, or whenever petitioned so to do by one-third of the voters in the district, the board shall call a meeting of the voters in the district at some convenient time and place fixed by the board to vote upon the question of the selection, purchase, exchange or sale of a school house site, or the erection, removal or sale of a school house. The president of the board shall be the chairman and the clerk of the board, secretary of such meeting. In case either of these officers is not present, his place shall be filled by some one chosen by the voters present. Three notices of the time, place and purpose of such meeting shall be posted in three public places in the district by the clerk, at least ten days prior to such meeting. If a

majority of the voters present at such meeting shall by vote select a school house site, or shall be in favor of the purchase, exchange or sale of the school house, as the case may be, the board shall locate, purchase, exchange or sell such site, or erect, remove or sell such school house, as the case may be, in accordance with such vote; provided, that it shall require a vote of two-thirds of the voters present and voting at such meeting to order the removal of the school house and such school house so removed cannot again be removed within three years from the date of such meeting.

§ 702. School house sites, how obtained. The school board of any school district may take in the corporate name thereof, any real property not exceeding two acres in area chosen as a site for school house, as provided in this chapter, and may hold and use such tract for school purposes only. Should the owner of such real property refuse or neglect to grant and convey such site, a site for such school house may be obtained by proceeding in eminent domain as provided in the code of civil procedure. If the site so selected is not used for the purposes for which it is taken for two successive years, it shall revert to the original owner or his assigns upon repayment of the sum originally paid by the corporation together with a reasonable consideration for the improvement. If such owner or his assigns neglects or refuses to make such repayment for one year after demand therefor by the board such site shall be the property of the district.

§ 62, c. 62, 1890.
am'd.

§ 703. Schools to be organized on petition. If a petition signed by the persons charged with the support and having the custody and care of nine or more children of school age, all of whom reside not less than two and one-half miles from the nearest school is presented to the board asking for the organization of a school for such children, the board shall organize such school and employ a teacher therefor if a suitable room for such school can be leased or rented at some proper location, not more than two and one-half miles distant from the residence of any one of such children, and if such petition is signed by the persons charged with the support and having the custody and care of twelve or more of such children the board shall organize a school and employ a teacher therefor, and if no suitable room for such school can be leased or rented, the board shall call a meeting of the voters of the district for the selection and purchase of a school house site therefor and the purchase or erection of a school house as provided for in section 700. If at such meeting no such site is selected or if it is not voted to erect or purchase a school house for such school the board shall select and purchase a school house site, and erect, purchase or move thereon a school house at a cost of not more than seven hundred dollars for such house and furniture therefor.

§ 63, c. 61, 1890.
§ 63, c. 56, 1891.

§ 704. School terms, how arranged. When schools may be discontinued. The district board shall determine and fix the length of time the schools of the district shall be taught in each year, and when each term of school shall begin and end. It shall so arrange such terms as to accommodate and furnish school privileges equally and equitably to pupils of all ages: provided, that every common school shall be kept in session for at least four months in each school year, and in each district in which the number of persons of school age is an average of fifteen or more to the school, each school shall be kept in session for at least six months in each school year: provided, further, that any school may be discontinued when the

§ 64, c. 62, 1890.
am'd.

number of pupils of school age residing nearest to such school shall be less than four, and all contracts between school boards and teachers shall contain a provision that no compensation shall be received by such teacher from the date of such discontinuance or when with the consent of a majority of the patrons of such school proper and convenient school facilities can be provided for the pupils therein in some other school.

§ 85, c. 62, 1890.

§ 705. Additional school time. If a majority of the patrons of any school averaging for its last term twelve or more pupils in daily attendance, shall petition the board to continue such school for an additional time, not exceeding nine months in any school year, the board shall continue such school for that length of time, if there are funds in the treasury sufficient for that purpose.

§ 86, c. 62, 1890.
19, c. 56, 1891.

§ 706. District high schools, how established and controlled. In any district containing four or more common schools and having an enumeration of sixty or more persons of school age residing therein the board may call, and if petitioned so to do by ten or more voters in the district, shall call a meeting of the voters of such district in the manner prescribed in section 700 to determine the question of the establishment of a district high school. If a majority of the voters at such meeting vote in favor of establishing such high school, the meeting shall further proceed to select a site therefor and to provide for the erection or purchase of a school building, or for the necessary addition to some school building therefor. Thereupon the board shall erect or purchase a building or make such addition for such high school, as shall be determined at such meeting, and shall establish therein a district high school containing one or more departments, and employ teachers therefor. Such school shall be kept in session for such time each year not less than three months, as the board may determine. The board shall, subject to the approval of the county superintendent, grade such high school and prescribe the studies to be pursued therein, and shall have the same management and control thereof as of the common schools in the district. Two or more adjacent school districts may join in the establishment and maintenance of such high school, when empowered so to do by a majority of the voters in each district at a meeting called and held as provided for in this section, in which case the building and furniture occupied and used for such high school shall belong to the districts so uniting, and all the costs of maintaining such school, including wages of teachers and all necessary supplies shall be paid by such districts in proportion to the assessed valuation of the property in each, and the employment of teachers therefor, and the management, control and grading thereof shall be vested in the joint boards of such districts, subject to the approval of the county superintendent of the county in which such school is situated.

§ 87, c. 62, 1890.
24, c. 56, 1891.

§ 707. School census. Annual school report. The board shall cause the clerk to make an enumeration each year of all unmarried persons of school age, being over six and under twenty years of age, having their legal residence in the district on the first day of December of that year, giving the name and age of such persons and the name of the parent or guardian having the care or custody of each. Such enumeration shall be made upon and in accordance with the blanks furnished therefor by the county superintendent and shall be returned to the county superintendent prior to the twentieth day of December. A copy of such enumeration shall also be kept in the

office of the district clerk. The board shall also cause the district clerk to make out an annual school report for the year beginning January first and ending December thirty-first, containing such financial and statistical statements and items as shall be required by the superintendent of public instruction upon and in accordance with the blanks furnished therefor by the county superintendent. Such report shall be carefully examined and certified as correct by the board at its regular meeting in January and transmitted to the county superintendent prior to the first day of February following. A copy of such report shall be filed in the district clerk's office.

§ 708. Records open to inspection. All reports, books, records, vouchers, contracts and papers relating to school business in a school district in the office of the clerk or treasurer, shall at all times be open to the inspection of any director, who shall advise and aid in securing correct records and accounts and legal reports, and they shall likewise be open to the superintendent of public instruction, and county superintendent and any particular paper or record shall be exhibited at reasonable hours to any voter or tax payer. § 89, c. 62, 1890.

§ 709. Records and teaching in English. All reports and records of school officers and proceedings of all school meetings shall be in the English language, and if any money belonging to any district shall be expended in supporting a school in which the English language shall not be taught exclusively, the county superintendent or any taxpayer of the school corporation may in a civil action in the name of the corporation recover for such corporation all such money from the officer so expending it or ordering or voting for its expenditure. § 89, c. 62, 1890.

ARTICLE 7.—SCHOOL FUNDS.

§ 710. State tuition fund, how raised. The net proceeds arising from all fines and penalties for violation of state laws, from leasing the school lands, the interest and income from the state permanent school fund together with the school poll tax and all school taxes levied by a general law shall be collected and paid into the state treasury in the same manner as is provided by law for the collection and payment of state taxes, and shall constitute the state tuition fund, which shall be apportioned among the several counties of the state in proportion to the number of children of school age in each, as shown by the last enumeration authorized by law. § 90, c. 62, 1890.
§ 1, c. 57, 1891.

§ 711. County treasurer to report funds quarterly. State superintendent apportionments. It shall be the duty of the county treasurer to receive from the proper officers the net proceeds of fines, penalties and forfeitures for violation of state laws, to collect the school poll tax and all taxes levied for school purposes by general law, and all moneys arising from leasing school lands within the county, and to forward a detailed statement of the moneys so collected, specifying the amount received from each of the above sources, to the state auditor at the same time that he is required to make reports of other moneys to such auditor. It shall be the duty of the state auditor on or before the third Monday in February, May, August and November in each year to certify to the superintendent of public instruction the amount of the state tuition fund and the state superintendent shall immediately apportion such fund among the several counties of the state in proportion to the number of children of § 91, c. 62, 1890.
§ 1, c. 57, 1891.

school age residing in each as shown by the last enumeration provided for by law, and certify to the state auditor, state treasurer and to the county treasurer and county superintendent of each county, the amount apportioned to the respective counties. Immediately upon receipt of such apportionment from the state superintendent as herein provided, the state auditor shall draw a warrant upon the state treasurer for the full amount of the state tuition fund apportioned to the several counties and shall deliver the same to the state treasurer taking his receipt therefor, and shall notify the several county treasurers of the amount due their respective counties and that such warrant has been issued therefor and the state treasurer shall pay on such warrant to the several county treasurers the amount due their respective counties; provided, however, that all moneys arising from interest on the permanent school fund and from leasing school lands shall be apportioned under a separate item and such money shall be taken account of as a separate item by all officers making or certifying such apportionment, or through whose hands any portion of such fund shall pass and it is further made the duty of the district treasurer to keep such fund separate from all other funds and if at the close of the school year any part of such fund which was apportioned prior to the third Monday of November of such year remains in the hands of the district treasurer, he shall return the same to the county treasurer taking his receipt therefor, and the county treasurer shall return all such funds so returned or that were not drawn by the district treasurer from the county treasurer to the state treasurer who shall receipt for the same, and the county treasurer shall certify to the state auditor the amount so returned to the state treasurer.

92, c. 62, 1890.
1, c. 57, 1891.

§ 712. Funds defined. How used. All money received by the school district from the apportionment made by the superintendent of public instruction shall constitute and be designated the state tuition fund. All money received from district taxes, from subscription, from sale of property, or from any other source whatever except from apportionment made by the superintendent of public instruction, shall be designated the special fund. In addition to the state tuition fund and the special fund, a sinking fund may be established as provided by this article. The state tuition fund shall be used only in the payment of teachers' wages; provided, that if the state tuition fund apportioned to any district in any one year is insufficient for the payment of teachers' wages in such district any money on hand or available belonging to the special fund of such district may be applied to meet such deficiency; provided, further, that if the state tuition fund apportioned to any one district in any one year is more than sufficient for the payment of teachers' wages in such district the portion of such fund in excess of the amount so required may be applied to the payment of warrants drawn upon the special fund of such district, if such district has school the required number of months during such year as required by law.

93, c. 62, 1890.
1, c. 57, 1891.

§ 713. Funds controlled and paid out by district treasurer. All funds shall be kept in the possession or under the control of and paid out by the district treasurer, and he shall keep one general account for each district of the entire receipts and expenditures, and separate itemized accounts as herein provided for each class of receipts and expenditures. His books shall at all times show by entries under proper heads all receipts of funds and payments there-

from, so as to enable any person readily to ascertain any balance in any account or any funds.

§ 714. Not entitled to tuition fund, when. Enumeration. No school district shall be entitled to receive any portion of the state tuition fund that fails to make a report of the enumeration of children of school age in the manner provided by law, nor until such enumeration has been taken and reported as required by law. The county superintendent of schools shall not authorize the payment of money apportioned to any district unless the bond and oath of such treasurer duly approved and certified are on file in the office of the district clerk and a certificate thereof filed in the office of the county superintendent. New districts organized after the annual enumeration has been taken shall proceed immediately to take the enumeration as provided by law, and after the receipt of such enumeration by the superintendent of public instruction through the county superintendent, the newly organized districts shall receive their proportionate share of the funds to be apportioned.

94, c. 62, 1890.
1, c. 57, 1891.

§ 715. Apportionment of funds by county superintendent. Within thirty days and in not less than twenty days after receiving the certificate of apportionment from the superintendent of public instruction the county superintendent shall apportion separately to the several school districts, special districts and districts organized under special law, which are entitled to any portion of the state tuition fund within the county in proportion to the number of children residing in each over six and under twenty years of age, excluding all married persons, as appears from the last enumeration authorized by law upon which the superintendent of public instruction made the apportionment to the several counties, and he shall immediately notify each district treasurer of the amount of money due his school district, and shall certify to the county treasurer and to the county auditor the amount due each school district. The county treasurer shall deliver to the several district treasurers upon the order of the county auditor the amounts apportioned to their respective districts, taking a receipt therefor.

95, c. 62, 1890.
1, c. 57, 1891.

§ 716. Special districts entitled to tuition fund. Special school districts shall be entitled to receive their proportion of the state tuition fund; provided that the clerk or secretary of the board of education thereof shall make a report to the county superintendent of the enumeration of children of school age therein at the time and in the manner prescribed in this chapter for other school districts to report the same.

96, c. 62, 1890.
1, c. 57, 1891.

§ 717. Treasurer's accounts. Annual settlement. The district treasurer shall open new accounts with each fund at the beginning of each school year and the balance in each fund shall be brought down and become the first entry in opening the account for the new year. On the Tuesday in January succeeding the annual meeting of the school board in each year, the school board shall make settlement with the district treasurer and shall carefully examine his books, accounts and vouchers and shall ascertain if the amount of all warrants, bonds and coupons paid and redeemed or paid in part together with the cash in his hands or under his control, is equal to the amount of the cash on hand at the beginning of the school year, together with all money received by him from all sources for school purposes during the year. The district treasurer shall deliver to the board at such annual meeting all warrants, bonds and coupons paid

97, c. 62, 1890.
1, c. 57, 1891.

and redeemed by him during the school year and held by him as vouchers taking the receipt of the board therefor, and such vouchers shall forthwith be filed with the district clerk. He shall at that meeting make his annual report in triplicate, one copy to be preserved in the treasurer's office, one to be filed with the clerk of the school board, and one to be transmitted to the county superintendent of schools, and the board shall cause to be published an itemized statement of the receipts and expenditures of the preceding year. The treasurer's reports shall show the following:

RECEIPTS.

The balance at the close of the year.
The amount received into the state tuition fund.
The amount received into the special fund.
The amount received into the sinking fund.

EXPENDITURES.

The amount paid for school houses, sites and furniture.
The amount paid for apparatus and fixtures.
The amount paid for teachers' wages.
The amount paid for services and expenses of school officers.
The amount paid for redemption of bonds.
The amount paid for interest on bonds.
The amount paid for incidental expenses.
The cash on hand at the close of the school year.

Such report shall include such other items as may be required by the district board or the superintendent of public instruction, and shall be upon and in conformity with the blanks furnished him for that purpose.

1898, c. 62, 1890,
1. c. 57, 1891.

§ 718. When county treasurer to pay funds to district treasurer. The treasurer of each district shall apply to the county auditor for an order, and the county treasurer, shall pay over to him on such order all of the school money collected for such district and all school money apportioned to such district by the county superintendent, and the county auditor shall issue such order when notified by the county superintendent in writing that such district treasurer has qualified and filed his oath and bond as provided by law. But no such notice of qualification is required during the term of each district treasurer, and when a new one is appointed for any reason or the incumbent has become disqualified, the clerk of the school board shall so inform the county superintendent, who shall also inform the county auditor. It shall be the duty of the county treasurer when payment is made to any school treasurer of any funds herein provided for, immediately to notify the clerk of the school board of the payment of the same.

1899, c. 62, 1890,
1. c. 57, 1891.

§ 719. County treasurer to keep accounts with school corporations. Each county treasurer shall keep a regular account with each school corporation, in which he shall charge himself with all taxes collected by levy of the district school board and all sums apportioned to the district by the county superintendent or other authority, and all sums received for the district, and he shall credit himself with all payments made to the treasurer of the district, distinguishing between the items paid by apportionment, those from local taxes, and those from other sources. He shall also credit himself

with all payments for redemption or indorsement of warrants in the collection of taxes and shall deliver to the district treasurer a duplicate tax receipt for the amount of each warrant so indorsed or redeemed together with all warrants so redeemed, at the time of making other regular payments to the district treasurer. To these credits, to balance the accounts, he shall add all items for legal fees, for collection and other duties.

§ 720. School taxes, how and when collected. It shall be the duty of the county treasurer to collect the taxes for school purposes at the same time and in the same manner that the county and state taxes are collected, and full power is hereby given to him to sell property for school taxes the same as is provided by law for the collection of other taxes. Whenever an error occurs in any school corporation's tax list the district school board or board of education in special districts may correct such errors and refund such taxes improperly collected. All penalties and interest collected on delinquent school taxes shall be applied to the proper fund to which such delinquent taxes belong.

100, c. 62, 1890.
1, c. 57, 1891.

ARTICLE 8. — TAXES.

§ 721. School board to levy tax. Each district school board shall have power and it shall be its duty to levy upon all the property subject to taxation in the district a tax for school purposes of all kinds authorized by law, not exceeding in the aggregate a rate of thirty mills on the dollar in any one year. Such tax shall be levied by resolution of the board prior to the twentieth day of July in each year, which resolution shall be entered in the records of the proceedings of the board. The clerk shall immediately thereafter notify the county auditor in writing of the amount of tax so levied, and such notice shall be in substantially the following form:

101, c. 62, 1890.
21, c. 56, 1891.

State of North Dakota, }
County of..... }
.....School District..... } ss.

To

County Auditor of County.

Sir:

You are hereby notified that the school board of school district has levied a tax of dollars upon all real and personal property in said school district for school purposes. You will duly enter and extend such tax upon the county tax list for collection, upon the taxable property of such school district for the current year.

Dated at this day of 189....

.....

District Clerk.

The notice of a tax to pay any judgment against the district shall be in addition to the regular tax and shall be certified to the county auditor under the same general form, as near as may be; provided, that if the boundaries of such district shall embrace a portion of two counties then the clerk of such district shall certify to the county auditor of the county in which is located the original district to which such portion of the district embraced in the other county is attached, in addition to the tax levy above mentioned, a list and valuation of all property subject to taxation in such portion of such district embraced in the other county, as shown by the assessor making the

assessment in such county, township or assessor's district, and the auditor shall enter such property upon the tax duplicate of his county and levy all school taxes upon the same, and the county treasurer of the county shall collect the taxes levied thereon the same as other taxes are collected and pay the same over to the treasurer of the district entitled thereto.

§ 102, c. 62, 1890.
am'd.

§ 722. Tax, how levied. The county auditor of each county shall at the time of making the annual assessment and levy of taxes, levy a tax of one dollar on each elector in the county for the support of common schools, and a further tax of two mills on the dollar upon all the taxable property in the county, to be collected at the same time and in the same manner as other taxes are collected, which shall be apportioned by the county superintendent of schools among the school districts of the county as provided by law.

§ 103, c. 62, 1890.

§ 723. Maximum levy for final judgment. Taxes to be uniform. When any final judgment shall be obtained against a school district the board thereof shall levy a tax upon the taxable property of such district not exceeding in amount twenty mills on the dollar in any one year, which shall be used in the payment thereof. The county auditor shall make out, charge and extend upon the tax list against each description of real property and against all personal property, and upon all taxable property of the district, all such taxes for schools and judgments he is so notified has been levied by the district in which the property is situated and taxable, in the same manner in which the county and state tax list is prepared, and deliver it to the county treasurer at the same time. All taxes for school purposes shall be uniform upon the property within each school district.

§ 104, c. 62, 1890.

§ 724. Statement of assessed valuation. Each assessor shall on or before the first day of July in each year furnish to the clerk of the school district, to the county superintendent of schools and to the county auditor a statement of the assessed valuation of all the property in such corporation subject to taxation.

§ 105, c. 62, 1890.

§ 725. Indebtedness of district, how adjusted when board illegal or failure to elect. If any school district in the state has for one or more years past, either through failure to elect a school board or through failure of the county superintendent to appoint a school board, been without a legal school board or if hereafter any school district through such failure to elect or to appoint such school board shall be without such legal school board, and such district shall have an authorized indebtedness either in bonds, interest due on bonds or otherwise, it shall be the duty of the county superintendent, the county treasurer and county auditor, acting as a board of adjusters, to assess upon the taxable property of such school corporation a tax not to exceed twenty mills on the dollar in any one year upon the assessed valuation thereof for the payment of the same. Which tax so levied shall be extended upon the tax lists by the county auditor and be collected by the county treasurer as other taxes are collected and shall be applied upon and used for the payment of such indebtedness, and shall be paid to the creditors of such district upon the warrant of the county auditor countersigned by the county superintendent, and all warrants, bonds, interest coupons, receipted bills or accounts shall be filed in the office of the county auditor and in case such school corporation has a bonded indebtedness, it shall be the duty of such board of adjusters to levy a tax upon the property of such district sufficient to create a sinking fund for the redemption

of such bonds upon the maturity of the same, such sinking fund to be levied and provided for in compliance with the requirements of such bonds.

ARTICLE 9.—VACANCIES.

§ 726. **Vacancy in office superintendent public instruction filled by appointment.** Should a vacancy occur in the office of the superintendent of public instruction, the governor shall have power and it shall be his duty to fill such vacancy by appointment, which appointment shall be valid until the next general election and until his successor is elected and qualified. § 106, c. 62, 1890.

§ 727. **Vacancy in office of county superintendent, how filled.** Should a vacancy occur in the office of county superintendent of schools, the board of county commissioners of such county shall have power and it shall be their duty to fill such vacancy by appointment, as provided by law, which appointment shall be valid until the next annual school election. The county auditor shall immediately notify the superintendent of public instruction of such appointment. § 107, c. 62, 1890.

§ 728. **Vacancy in office of director or treasurer, how filled.** When any vacancy occurs in the office of director or treasurer of a school district by death, resignation, removal from the district, or otherwise, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the district, and such superintendent shall immediately appoint in writing some competent person, who shall qualify and serve until the next annual school election. The county superintendent shall at the same time notify the clerk of the school district and the county auditor of every such appointment. § 108, c. 62, 1890.

§ 729. **Vacancy in office of clerk, how filled.** Should the office of clerk of a school district become vacant, the school board shall immediately fill such vacancy by appointment and the president of the board shall immediately notify the county superintendent and the county auditor of such appointment. § 109, c. 62, 1890.

§ 730. **Office, when deemed vacant.** Any office of a school district shall become vacant by resignation of the incumbent thereof, but such resignation shall not take effect until a successor has qualified according to law. Any office of a school district shall be deemed vacant if the person duly elected thereto shall neglect or refuse for the period of two weeks after the beginning of the term for which he was elected, to accept and qualify for such office and serve therein. Any school officer may be removed from office by a court of competent jurisdiction, as provided by law. § 110, c. 62, 1890.
§ 22, c. 56, 1891.

ARTICLE 10.—EQUALIZATION OF INDEBTEDNESS.

§ 731. **Equalization of indebtedness, by arbitration.** After the boundaries of a school district have been established as provided for in this chapter, all school districts or parts of school districts that existed as school corporations before the taking effect of this code and that are now included in one school district shall effect an equalization of property, funds on hand and debts. To effect this each school board of such corporation, constituting a school district under the operation of this chapter, shall select one arbitrator and the several arbitrators so selected together with the county superinten- § 111, c. 62, 1890.

to the rules prescribed by the superintendent of public instruction. If from the percentage of correct answers required by the rules and other evidence disclosed by the examination, including particularly the superintendent's knowledge and information of the candidate's successful experience, if any, the applicant is found to be a person of good moral character, to possess a knowledge and understanding together with aptness to teach and govern, which will enable such applicant to teach in the common schools of the state the various branches required by law, such superintendent shall grant to such applicant a certificate of qualification.

121, c. 62, 1890.
23, c. 56, 1891.
1, c. 52, 1895.

§ 741. Teachers' grades, how established. Re-examination, when allowed. Such certificates shall be of three regular grades, the first grade for a term of three years, the second grade for a term of two years, and the third grade for one year, according to the ratio of correct answers of each applicant and other evidence of qualification appearing from the examination. No certificate shall be granted unless the applicant shall be found proficient in and qualified to teach the following branches of a common English education: Reading, writing, orthography, language lessons and English grammar, geography, United States history, arithmetic, civil government, physiology and hygiene, and for a first and second grade can pass a satisfactory examination in theory and practice of teaching. In addition to the above, applicants for a first grade certificate shall pass a satisfactory examination in physical geography, elements of natural philosophy, elements of physiology, elementary geometry and algebra. The percentage required to pass any branch shall be prescribed by the superintendent of public instruction. In addition to these regular grades of certificates, the county superintendent may grant permission to teach until the next regular examination, to any person applying at any other time than at a regular examination who can show satisfactory reasons for failing to attend such examination, subject to such rules and regulations as may be prescribed by the superintendent of public instruction. Such permit shall not be granted more than once to any person. The written answers of all candidates for county certificates, after being duly examined by the county superintendent, shall be kept by him for the space of six months after such examination, and any candidate, thinking an injustice has been done him may by paying a fee of two dollars into the institute fund of the county and notifying both the county superintendent and the superintendent of public instruction of the same, have his papers re-examined by the superintendent of public instruction; the county superintendent shall on receipt of such notice from such complaining candidate transfer such papers to the superintendent of public instruction, who shall examine such answers, and, if such answers warrant it, shall instruct the county superintendent to issue to such candidate a county certificate of the proper grade, and the county superintendent shall carry out such instructions.

122, c. 62, 1890.
24, c. 56, 1891.
2, c. 54, 1895.

§ 742. Qualifications of teachers. Contracts, when void. No certificate or permit to teach shall be issued to any person under eighteen years of age and no first grade certificate shall be issued to any person under twenty years of age and who has not taught successfully twelve school months; and a third grade certificate shall not be issued more than twice to the same person. The certificate so issued by a county superintendent shall be valid only in the county where issued; provided, that a first grade certificate may be renewed once

without examination at the discretion of the county superintendent, upon payment of the proper fee for the institute fund as provided in the case of examination; provided, further, that a first grade certificate shall be valid in any county of the state when indorsed by the county superintendent of such county. No person shall be employed or permitted to teach in any of the public schools of the state except those in cities organized for school purposes under special laws, who is not the holder of a lawful certificate of qualification, or permit to teach; provided, further, that no certificate or permit to teach in the schools of the state shall be granted to any person not a citizen of the United States unless such person has resided in the United States for one year last prior to the time of such application for certificate or permit. Any contract made in violation of this section shall be void.

§ 743. Fee for certificate. Each applicant for a county certificate shall pay one dollar to the county superintendent, which shall be used by him in support of teachers' institutes in the county. § 123, c. 62, 1890.

§ 744. Certificates, when revocable. The county superintendent is authorized and required to revoke and annul at any time a certificate granted by him or his predecessor for any cause which would have authorized or required him to refuse to grant it if known at the time it was granted, and for incompetency, immorality, intemperance, cruelty, crime against the law of the state, refusal to perform his duty, or general neglect of the business of the school. The revocation of the certificate shall terminate the employment of such teacher in the school where he may be at the time employed, but such teacher must be paid up to the time of receiving notice of such revocation. The superintendent must immediately notify the clerk of the school district where such teacher is employed and he may notify the teacher through the clerk of such revocation, and must enter his action in such case in the books of record in his office. § 124, c. 62, 1890.

§ 745. Proceedings to revoke. Teachers allowed defense. In proceedings to revoke a certificate the county superintendent may act upon his personal knowledge or upon competent evidence obtained from others. In the latter case, action shall be taken only after a fair hearing, and the teacher must be notified of the charge and given an opportunity to make a defense at such time and place as may be stated in such notice. Upon his own knowledge the superintendent may act immediately without notice, after an opportunity has been afforded such teacher for personal explanation. When any certificate is revoked the teacher shall return it to the superintendent, but if such teacher refuses or neglects so to do the superintendent may issue notice of such revocation by publication in some newspaper printed in the county. § 125, c. 62, 1890.

ARTICLE 12.—DUTIES OF TEACHERS.

§ 746. Give notice of opening and closing school. Each 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 time when it will probably close. If such school is to be suspended for one week or more in such term, the teacher shall notify the county superintendent of such suspension. § 126, c. 62, 1890.

§ 747. When teacher not entitled to compensation. No teacher shall be entitled to or receive any compensation for the time § 127, c. 62, 1890.

he teaches in any public school without a certificate valid and in force for such time in the county where such school is taught, except that if a teacher's certificate shall expire by its own limitation within six weeks of the close of the term, such teacher may finish such term without re-examination or renewal of such certificate.

§ 128, c. 62, 1890.

§ 748. Teacher's register, what to contain. Each teacher shall keep a school register and at the close of each term make a report, containing the number of visits of the county superintendent, and such items and in such form as shall be required. Such report shall be made in duplicate, one copy of which shall be filed with the district clerk, and one copy sent to the county superintendent. No teacher shall be paid the last month's wages in any term until such report shall be filed with and be approved by the district clerk.

§ 129, c. 62, 1890.

§ 749. School year and school week defined. Holidays. The school year shall begin on the first day of January and close on the thirty-first day of December of each year. A school week shall consist of five days, and a school month of twenty days. No school shall be taught on a legal holiday nor on any Saturday. A legal holiday in term time falling upon a day which otherwise would be a school day shall be counted and the teacher shall be paid therefor, but no teacher shall be paid for Saturday, nor be permitted to teach on Saturday to make up for the loss of a day in the term.

§ 130, c. 62, 1890.
§ 1, c. 56, 1895.

§ 750. Branches to be taught in all schools. Each teacher in the common schools shall teach pupils when they are sufficiently advanced to pursue the same, the following branches: Orthography, reading, spelling, writing, arithmetic, language lessons, English grammar, geography, United States history, civil government, physiology and hygiene, giving special instruction concerning the nature of alcoholic drinks, stimulants and narcotics, and their effect upon the human system, physiology and hygiene and the nature of alcoholic drinks, stimulants and narcotics, and their effect upon the human system shall be taught as thoroughly as any branch is taught, by the use of a text book to all pupils able to use a text book who have not thoroughly studied that branch and orally to all other pupils. When such oral instruction is given as herein required, a sufficient time, not less than fifteen minutes, shall be given to such oral instruction for at least four days in each school week. Each teacher in special school districts and in cities organized for school purposes under special law shall conform to and be governed by the provisions of this section.

§ 131, c. 62, 1890.
am'd.

§ 751. Teachers' institutes, how noticed. Penalty for failure to attend. When a teachers' institute is appointed to be held in any county, it shall be the duty of the county superintendent to give written or printed notice thereof to each teacher in the public schools of the county, and as far as possible to all others not then engaged in teaching who are holders of teachers' certificates at least ten days before the opening of such institute of the time and place of holding it. Each teacher receiving such notice engaged in teaching a term of school, which includes the time of holding such institute, shall close school during such institute and attend the same and shall be paid by the school board of the district his regular wages as teacher for the time (not less than four days) he attended such institute, as certified by the county superintendent or conductor of the institute. No teacher failing to attend such institute shall receive any compensation for the time he may have taught during the session of the same. The county superintendent may revoke the certificate of any

teacher in his county for inexcusable neglect or refusal after due notice to attend a teachers' institute held for such county. The provisions of this section shall not apply to teachers in cities organized for school purposes under a special law.

§ 752. Pupil may be suspended for cause. A teacher may suspend from school for not more than five days any pupil for insubordination or habitual disobedience, or disorderly conduct. In such case the teacher shall give immediate notice to the parent or guardian of such pupil, also to some member of the district school board of such suspension and the reason therefor. § 132, c. 62, 1890.

§ 753. Assignment of studies to pupils. It shall be the duty of the teacher to assign to each pupil such studies as he is qualified to pursue, and to place him in the proper class in any studies subject to the provisions in section 750; provided, that in a graded school under the charge of a principal or local superintendent, such principal or superintendent shall perform this duty. In case any parent or guardian is dissatisfied with such assignment or classification, the matter shall be referred to and decided by the county superintendent. § 133, c. 62, 1890.

§ 754. Bible not sectarian book, reading optional with pupil. The Bible shall not be deemed a sectarian book. It shall not be excluded from any public school. It may at the option of the teacher be read in school without sectarian comment, not to exceed ten minutes daily. No pupil shall be required to read it nor be present in the school room during the reading thereof contrary to the wishes of his parents or guardian or other person having him in charge. Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, and respect for honest labor, obedience to parents and due deference for old age, shall be given by each teacher in the public schools. § 134, c. 62, 1890.

ARTICLE 13. — INSTITUTES, ASSOCIATIONS AND READING CIRCLE.

§ 755. Teachers' institutes. Apportionment of funds. All money received by the county superintendent from examination fees shall constitute an institute fund for the county and shall be used by him to aid in the support of teachers' institutes to be held within and for the county, and to pay necessary expenses incurred therein. The county superintendent shall, at the end of each year, submit a full and accurate statement of the receipts and expenditures of these funds, verified by his oath, to the superintendent of public instruction; provided, that the several persons designated as herein provided, to act as conductors of teachers' institutes shall, at the close of each series of institutes, certify to the superintendent of public instruction an itemized statement of all actual and necessary expenses incurred by such conductor in the discharge of his duties as such, and such superintendent shall apportion such total expense among the several counties in which such conductor was assigned to conduct the institute, in proportion to the average attendance at such institute, but by such apportionment no county shall be proportioned a greater amount than the amount of the county institute fund on hand. The county superintendent shall present a bill to the county auditor for the amount of such expense apportioned to his county, and the § 135, c. 62, 1890.
§ 25, c. 56, 1891

auditor shall issue a warrant therefor as provided by law. All additional compensation and other incidental expenses of such county institute, except as provided by the state appropriation, shall be paid out of the county institute fund.

§ 136, c. 62, 1890.
§ 26, c. 56, 1891.

§ 756. Appropriation for institute fund. Designation of conductors. There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of fifty dollars each year to each organized county in the state in which there are ten or more resident teachers, which shall be designated as the state institute fund and which shall be used exclusively in employing persons of learning, ability and experience as conductors of teachers' institutes, and the further sum of ten cents a mile for the distance actually and necessarily traveled by a lecturer for such institute. The superintendent of public instruction after consultation with the county superintendents as to the special needs and wants of their respective counties, shall appoint the time, place and duration of these institutes and shall designate the persons to act as conductors of and lecturers at such institutes, as in his judgment the needs of the various counties demand.

§ 137, c. 62, 1890.
§ 27, c. 56, 1891.
§ 1, c. 57, 1893.

§ 757. Institute funds, how paid out. It shall be the duty of the county superintendent in all cases to consult with the superintendent of public instruction in reference to the management of such institute, and as far as practicable, to carry out the suggestions of such superintendent as to modes of instruction. No salary shall be paid to any conductor of any institute not previously appointed or employed as herein provided. The money hereby appropriated from the state treasury for the support of teachers' institutes shall be paid to the persons to whom it is due by warrant of the state auditor upon the state treasurer, which shall be issued upon the presentation of an account in due form receipted by the person to whom due and approved by the superintendent of public instruction; provided, that no county shall receive more than ten dollars from such appropriation for the payment of conductor's salary for each day its institute is in session.

§ 138, c. 62, 1890.

§ 758. County commissioners may aid institutes. The money assigned for any particular institute may be added to any fund furnished for the purpose by any county, and the institute extended as long as the entire fund will allow. If a sufficient county fund is not otherwise provided, the board of county commissioners may appropriate not more than fifty dollars in any county each year in aid of institutes. The superintendent of public instruction may require a statement of the amount of funds the county has on hand for this purpose at any time.

ARTICLE 14.—COMPULSORY ATTENDANCE.

§ 140, c. 62, 1890.
§ 28, c. 56, 1891.

§ 759. School age. Who exempt from compulsory attendance. Every parent, guardian or other person having control of any child between eight and fourteen years of age, shall be required to send such child to a public school in the district, city or village in which he resides at least twelve weeks in each school year, six weeks of which shall be consecutive; and every parent, guardian or other person, having control of any deaf child or youth between seven and twenty-one years of age, shall be required to send such child to the school for the deaf at the city of Devils Lake, for at least eight

months in each school year; provided, that such parent, guardian or other person having control of any child shall be excused from such duty by the school board of the district or the board of education of the city, or village, whenever it shall be shown to their satisfaction, subject to appeal as provided by law, that one of the following reasons therefor exists:

1. That such child is taught for the same length of time in a private school, approved by such board; but no school shall be approved by such board unless the branches usually taught in the public schools are taught in such school.

2. That such child has already acquired the branches of learning taught in the public schools.

3. That such child is in such a physical or mental condition (as declared by the county physician if required by the board), as to render such attendance inexpedient or impracticable. If no school is taught the requisite length of time within two and one-half miles of the residence of such child by the nearest route, such attendance will not be enforced but this provision shall not apply to deaf children in the state. The common schools provided for in this chapter shall be at all times equally free, open and accessible to all children over six and under twenty years of age, residents of the school districts where they are held, or entitled to attend school under any special provisions of this chapter, subject to the regulations herein made and to such regulations as the several school boards and boards of education may prescribe equitably and justly and not in conflict with the provisions of law.

§ 760. Penalty. Any such parent, guardian or other person failing to comply with the requirements of the foregoing section, shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be fined in a sum not less than five nor more than twenty dollars for the first offense and not less than ten dollars nor more than fifty dollars for the second and every subsequent offense with costs in each case. § 141, c. 62, 1890.

§ 761. Prosecution for neglecting this duty. It shall be the duty of the president of the board of education of any city, town or village, or the president of the school board of any district, to inquire into all cases of neglect of the duty prescribed in this article and ascertain from the person neglecting to perform such duty, the reason therefor, if any, and shall forthwith proceed to secure the prosecution of any offense occurring under this article, and any such president neglecting to secure such prosecution for such offense within fifteen days after a written notice has been served by any taxpayer in such city, town, village or district, unless such person so complained of shall be excused by the board of education or school board for one of the reasons hereinbefore stated, he shall be deemed guilty of misdemeanor, and upon conviction shall be fined in a sum not less than five nor more than twenty dollars. § 142, c. 62, 1890.

§ 762. Child labor prohibited during school hours. 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 parents or guardian, in any other manner, during the hours when the public schools in the city, village or district are in session, unless the person employing him shall first procure a certificate from the superintendent of schools of the city or village, if one is employed, otherwise from the clerk of the school board or board of edu- § 143, c. 62, 1890.
29, c. 56, 1891.

cation, 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 759; and it shall be the duty of such superintendent or clerk to furnish such certificate upon application of the parent, guardian or other persons having control of such child, entitled to the same.

§ 144, c. 62, 1890.
§ 30, c. 56, 1891.

§ 763. Penalty for violation. Each 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, is guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense in a sum not less than twenty nor more than fifty dollars and costs. Each person authorized to sign a certificate as prescribed in the preceding section, who certifies to any materially false statement therein, shall be fined not less than twenty nor more than fifty dollars and costs.

§ 145, c. 62, 1890.

§ 764. Prosecutions, how brought. Prosecutions under this article shall be brought in the name of the state of North Dakota before any court of competent jurisdiction, and the fines collected shall be paid over to the county treasurer and by him credited to the general school fund of the state.

ARTICLE 15. — FINES, FORFEITURES AND PENALTIES.

§ 146, c. 62, 1890.

§ 765. Penalty for neglect of duty by school director, treasurer or clerk. Each person duly elected to the office of director, treasurer or clerk of any district, who, having entered upon the duties of his office, shall neglect or refuse to perform any duties required of him by the provisions of this chapter shall upon conviction be fined in the sum of ten dollars, and his office shall be deemed vacant.

§ 147, c. 62, 1890.

§ 766. Penalty for false election returns. Any judge or clerk of election, school district clerk or county auditor who willfully violates the provisions of this chapter in relation to elections or who willfully makes a false return shall upon conviction be deemed guilty of a felony.

§ 148, c. 62, 1890.
§ 31, c. 56, 1891.

§ 767. Speculation in office prohibited. No school officer shall personally engage in the purchase of any school bonds or warrants, nor shall any such officer be personally interested in any contract requiring the expenditure of school funds, except for the purchase of fuel and such supplies as are in daily use, but not including furniture, or the expenditure of funds appropriated by the state, county, school corporation or otherwise for any school purpose connected with his office. Any violation of this section shall be a misdemeanor.

§ 149, c. 62, 1890.

§ 768. Penalty for unlawful drawing of school money. Any person who draws money from the county treasury, who is not at the time a duly qualified treasurer of the school corporation for which he draws the money and authorized to act as such, shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than twenty-five dollars.

§ 150, c. 62, 1890.

§ 769. Use of school funds. When embezzlement. Each treasurer who shall loan any portion of the money in his hands belonging to any school district, whether for consideration or not, or who shall expend any portion thereof for his own or any other person's

private use, is guilty of embezzlement, and no such treasurer shall pay over or deliver the school money in his hands to any officer or person or to any committee to be expended by him or them; but all public funds shall be paid out only by the proper treasurer as hereinbefore provided.

§ 770. Action to recover money when treasurer fails to pay over. If any person shall refuse or neglect to pay over any money in his hands as treasurer of a school district to his successor in office his successor must, without delay, bring action upon the official bond of such treasurer for the recovery of such money. § 151, c. 62, 1890.

§ 771. Penalty, when indorsement of unpaid warrants is not made. Any violation by a district treasurer of the provisions of this chapter requiring indorsement of warrants not paid for want of funds, and the payment thereof in the order of presentation and indorsement, is a misdemeanor punishable by a fine not exceeding one hundred dollars. § 152, c. 62, 1890.

§ 772. Penalty for false reports. Each clerk or treasurer of a district who willfully signs or transmits a false report to the county superintendent or willfully signs, issues or publishes a false statement of facts purporting or appearing to be based upon the books, accounts or records or of the affairs, resources and credit of the district shall upon conviction be punished by a fine not exceeding fifty dollars or by imprisonment in the county jail not exceeding fifteen days. § 153, c. 62, 1890.

§ 773. Penalty for willful disturbance of public school. Each person, whether pupil or not, who willfully molests or disturbs a public school when in session or who willfully interferes with or interrupts the proper order or management of a public school by act of violence, boisterous conduct or threatening language, so as to prevent the teacher or any pupil from performing his duty, or who shall in the presence of the school or school children upbraid, insult or threaten the teacher shall upon conviction thereof be punished by a fine not exceeding twenty-five dollars or by imprisonment in the county jail for a period not exceeding ten days, or by both. § 155, c. 62, 1890.

§ 774. Proposals for contracts. No contract, except for teachers' or janitors' wages, involving the expenditure of school funds or money appropriated for any purpose relating to the educational system of this state or any county, district or school corporation therein, when the amount exceeds one hundred dollars, shall be let until proposals are advertised for, and after such advertisement, only to the lowest responsible bidder. Any violation of this section shall be a misdemeanor. § 156, c. 62, 1890.

ARTICLE 16.—BONDS.

§ 775. School bonds, how issued. Whenever a duly constituted school district in any organized county in the state at any regular or special meeting held for that purpose shall determine, by a majority vote of all the qualified voters of such school district present at such meeting and voting, to issue school district bonds for the purpose of building and furnishing a school house and purchasing grounds on which to locate the same, or to fund any outstanding indebtedness, the district school board may lawfully issue such bonds in accordance with the provisions of this article. § 159, c. 62, 1890.

§ 160, c. 62, 1890.

§ 776. Notice of election to vote bonds. Before the question of issuing bonds shall be submitted to a vote of the school district, notices shall be posted in at least three public and conspicuous places in such district stating the time and place of such meeting, the amount of bonds proposed to be issued, and the time in which they shall be made payable. Such notices shall be posted at least twenty 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 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 issue bonds in accordance with such vote; but if a majority of all votes cast are against issuing bonds then no further action can be had and the question shall not be again submitted to a vote for one year thereafter, except for a different amount; provided, 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 at least one-third of the voters of the district.

§ 161, c. 62, 1890.

§ 777. Bonds, denomination of. Interest. Limit of issue. The denomination of the bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty not exceeding five hundred dollars and shall bear interest at the rate of not exceeding seven per cent per annum, payable semi-annually in accordance with interest coupons which shall be attached to such bonds; and no greater amount than one thousand dollars 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 cent of its assessed valuation, and may be made payable in not less than ten nor more than twenty years from their date.

§ 162, c. 62, 1890.
am'd.

§ 778. Bonds, record of to be kept. Whenever any bonds are issued under the provisions of this chapter they shall be lithographed or printed on bond paper and shall state upon their face the date of their issue, the amount of the bonds, to whom and for what purpose issued, also the time and place of payment and the rate of interest to be paid. They shall have printed upon the margin the words "Authorized by article 16 of chapter 9 of the political code of North Dakota of 1895." Immediately after the issuing of school bonds pursuant to this chapter the clerk of the school district so issuing its bonds shall file with the county auditor of the county in which such district is situated, certified copies of all the proceedings had in such district relative to the issuing of such bonds and also a statement of the amount of the indebtedness of such school district; and before any of the bonds are disposed of they shall be presented to the county auditor of the county in which the school district issuing the same is situated. He shall carefully examine the records of the proceedings of such school district upon the question of issuing such bonds as the same are filed with him as hereinbefore directed, and shall satisfy himself by the evidence thus furnished whether or not all the laws of the state relative to the issuing of such bonds have been complied with. If satisfied that they have been and that the bonds in question have been legally issued, he shall in a book kept for such purpose preserve a register of each bond showing in separate columns the

name of the school district issuing the bonds, the number of such bonds, the denomination thereof, the date of their issue, the date when they will mature, the names of the school officers executing the same and such other facts as may be pertinent, and he shall then indorse on each of such bonds the following certificate:

State of North Dakota, }
County of..... } ss.

I,, county auditor, do hereby certify that the within bond is issued pursuant to law and is within the debt limit prescribed by the constitution of the state of North Dakota, and in accordance with the vote of school district, at a (regular or special) meeting held on the day of, A. D. 189..., to issue bonds to the amount of dollars, and is a legal and valid debt of such school district; that such bonds are duly registered in this office and that such school district is legally organized and the signatures affixed to such bonds are the genuine signatures of the proper officers of such school district.

The blanks shall be filled according to the facts and the certificate officially signed by the county auditor and attested by his official seal. Such bonds shall be signed by the president and clerk of the school board and shall be registered 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 date when the same will become due.

§ 779. Sinking fund and interest tax. 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 at or before their issuance and collected as other taxes are collected, a sum sufficient, not exceeding five mills on the dollar of assessed valuation of such districts, to pay interest upon such bonded indebtedness, and after five years in like manner a further tax not exceeding two 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 are sufficient funds on hand belonging to such sinking fund the school board may, in its discretion, purchase any of its outstanding bonds at their market value and pay for the same out of such sinking fund. § 163, c. 62, 1890.

§ 780. Bonds, how negotiated. When any bonds shall be issued under the provisions of this article, 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 the necessary outbuildings. § 164, c. 62, 1890.

§ 781. County auditor may levy tax to pay bonds, when. When any school board neglects or refuses to levy a tax in accordance with law to meet outstanding bonds or the 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. § 165, c. 62, 1890.
am'd.

§ 782. Canceled bonds, record of. When the bonds of any school district shall have been paid 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 amount paid shall be entered in the clerk's register against the proper § 166, c. 62, 1890.
am'd.

number of the bonds, 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.

§ 167, c. 62, 1890.
§ 32, c. 56, 1891.

§ 783. Proposals for building school houses. When any school house is built with funds provided for in the manner herein authorized, the school board shall advertise at least thirty 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 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 such 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 are rejected, such board shall advertise anew in the same manner as before until a reasonable bid shall be submitted.

§ 784, c. 62, 1890.
§ 32, c. 56, 1891.

§ 784. Provisions of this article, how applicable. The provisions of this article shall be applicable to and authorize the issuance of bonds by such school districts as have already built school houses and issued orders or warrants therefor and any such school district may vote to bond the indebtedness incurred by reason of building and furnishing a school house and purchasing a site for the same and bonds may be issued in the same manner as hereinbefore provided for building and furnishing school houses.

ARTICLE 17. — SPECIAL DISTRICTS.

§ 169, c. 62, 1890.
§ 33, c. 56, 1891.

§ 785. Cities governed by the provisions of this article. All cities and incorporated towns and villages which have heretofore been organized under the general school laws and which are provided with a board of education shall be governed by the provisions of this article. Any city or incorporated town or village having a population of over three hundred inhabitants may be constituted a special school district in the manner hereinafter prescribed, and shall then be governed by the provisions of this article; provided, that any city heretofore organized for school purposes under a special act may adopt the provisions of this article by a majority vote of the voters therein, in the same manner as is provided for the organization of a new corporation under the provisions of this article.

§ 170, c. 62, 1890.

§ 786. Adjacent territory, how attached for school purposes. When any city, town or village has been organized for school purposes and provided with a board of education under any general school law, or a special act, or under the provisions of this article, territory outside the limits thereof but adjacent thereto may be attached to such city, town or village for school purposes by the board of education thereof upon application in writing signed by a majority of the voters of such adjacent territory; and upon such application being made, if such board shall deem it proper and to the best interests of the schools of such corporation and of the territory to be attached, an order shall be issued by such board attaching such adja-

cent territory to such corporation for school purposes, and the same shall be entered upon the records of the board. Such territory shall from the date of such order be and compose a part of such corporation for school purposes only; such adjacent territory shall be attached for voting purposes to such corporation, or if the school election is held in wards, to the ward or wards or election precinct or precincts to which it lies adjacent; and the voters thereof shall vote only for school offices and upon school questions.

§ 787. Name of body corporate. Every such district shall be a body corporate for school purposes by the name of "The board of education of the city, town or village (as the case may be) of (here insert the corporate name of the city, town or village) of the state of North Dakota," and shall possess all the powers and duties usual to corporations for public purposes or conferred upon it by this article or which may hereafter be conferred upon it by law; and in such name it may sue and be sued, contract and be contracted with, and hold and convey such real and personal property as shall come into its possession by will or otherwise; and it shall procure and keep a corporate seal by which its official acts may be attested. § 171, c. 62, 1890.

§ 788. Conveyance of school property, how executed. Any such city or incorporated town or village is authorized and required, upon the request of the board of education, to convey to such board of education all property within the limits of any such corporation heretofore purchased by it for school purposes and now held and used for such purposes, the title to which is vested in any such civil corporation. All conveyances for such property shall be signed by the mayor or president of the board of trustees and attested by the clerk of such corporation, and shall have the seal of the corporation affixed thereto and be acknowledged by the mayor or president in the same manner as other conveyances of real estate. § 172, c. 62, 1890.

§ 789. Special school districts, how organized. When a petition signed by one-third of the voters of a city or incorporated town or village entitled to vote at such election is presented to the council or board of trustees thereof asking that such city, town or village be organized as a special school district, such council or board of trustees shall order an election for such purpose, notice of which shall be given and the election conducted and the returns made in the manner provided by law for the annual election of municipal officers of such corporation; and the voters thereof shall vote for or against organization as a special school district at such election. § 173, c. 62, 1890.

§ 790. Election of board of education. If a majority of the votes cast at such election is for organization as a special school district another election shall be called in the same manner as is prescribed in the foregoing section, at which the voters of such city, town or village shall elect five members of the board of education, two of whom shall serve until the first annual election, two until the second annual election and one until the third annual election thereafter and until their successors are elected and qualified; and their respective terms shall be determined by lot. § 174, c. 62, 1890.

§ 791. Terms of office. Quorum. The board of education of each special district shall consist of five members who shall be elected by the legal voters thereof and who shall hold their office for the term of three years and until their successors are elected and qualified, except as provided for first elections under this article, and

three members shall constitute a quorum for the transaction of business at any legal meeting.

§ 176, c. 62, 1890.

§ 792. Members not to be interested in school contracts. The members of such board shall receive no compensation, and shall not be interested, directly or indirectly, in any contract for making any improvements or repairs or for erecting any building or for furnishing any material or supplies for their district.

§ 177, c. 62, 1890.

§ 793. Annual and special meetings of board. The annual meeting of such board of education shall be held on the second Tuesday in July following the annual election, at which time the newly elected members shall assume the duties of their office. Each board shall meet for the transaction of business as often as once in each calendar month thereafter and may adjourn for a shorter time. Special meetings may be called by the president or in his absence by any two members of the board by giving a personal notice to each member of the board or by causing a written or printed notice to be left at his last place of residence at least forty-eight hours before the time of such meeting.

§ 178, c. 62, 1890.

§ 794. Organization of board. At the annual meeting on the second Tuesday in July of each year such board of education shall organize by electing a president from among its members who shall serve for one year; and they shall also elect a clerk, not one of their own number, who shall hold his office during the pleasure of the board and receive such compensation for his services as shall be fixed by the board. In the absence of the president at any meeting, a president pro tempore may be elected by the board.

§ 179, c. 62, 1890.

§ 795. Duties of president. The president shall preside at all meetings of the board, appoint all committees whose appointment is not otherwise provided for and sign all warrants ordered by the board to be drawn upon the treasurer for school moneys and perform other acts required by law.

§ 180, c. 62, 1890.

§ 796. Duties of clerk. Records. The clerk shall keep a true record of all the proceedings of the board, take charge of its books and documents, countersign all warrants for school moneys drawn upon the treasurer by order of the board and affix the corporate seal thereto and perform such other duties as the board may require. The records, books, vouchers and papers of the board shall be open to examination by any taxpayer of the district. Such record or a transcript thereof certified by the clerk and attested by the seal of the board, shall be received in all courts as prima facie evidence of the facts therein set forth.

§ 181, c. 62, 1890.
am'd.

§ 797. Powers and duties of board. Each board of education shall have power and it shall be its duty:

1. To establish a system of graded common schools, which shall be free to all children of legal school age residing within such special district, and shall be kept open not less than six nor more than ten months in any year.

2. To establish and maintain such schools in its city, town or village as it shall deem requisite or expedient and to change or discontinue the same.

3. To establish and maintain a high school, whenever in its opinion the educational interests of the corporation demand the same, in which such courses of study shall be pursued as shall be

prescribed or approved by the superintendent of public instruction, together with such additional courses as such board of education may thereafter deem advisable to establish.

4. To purchase, sell, exchange and hire school houses and rooms, lots or sites for school houses, and to fence and otherwise improve them as it deems proper.

5. Upon such lots and upon such sites as may be owned by such special district to build, alter, enlarge, improve and repair school houses, outhouses and appurtenances as it may deem advisable.

6. To purchase, sell, exchange, improve and repair school apparatus, text-books for the use of the pupils, furniture and appendages, and to provide fuel for the schools.

7. To have the custody of all school property of every kind and to see that the ordinances and by-laws of the city or village in relation thereto are observed.

8. To contract with, employ and pay all teachers in such schools and to dismiss and remove for cause any teacher whenever the interests of the school may require it; but any such teacher shall be required to hold a certificate to teach, issued by the county superintendent or the superintendent of public instruction, and if any such teacher holds only a county certificate the board may impose such further requirements as the best interests of the several grades may require. No person who is a relative of any member of the board shall be employed as teacher without the concurrence of the entire board.

9. To employ, should it deem it expedient, a competent and discreet person as superintendent of schools and to fix and pay a proper compensation therefor, and such superintendent may be required to act as principal or teacher in such schools.

10. To defray the necessary and contingent expenses of the board, including the compensation of its clerk.

11. To adopt, alter and repeal, whenever it may deem expedient, rules and regulations for organization, grading, government and instruction and the reception of pupils, their suspension and expulsion and their transfer from one school to another. But no pupil shall be suspended or expelled except for insubordination, habitual disobedience or disorderly conduct; such suspension shall not be for a longer period than ten days, nor such expulsion beyond the end of the current term of school.

12. Each member shall visit, at least twice in each year, all the public schools in the city or village.

13. To make a report on January first, or as soon thereafter as practicable, of the progress, prosperity and condition, financial as well as educational, of all the schools under its charge, a copy of which, together with such further information as shall be required by the superintendent of public instruction, shall be forwarded to the county superintendent the same as reports are made by other school districts; and such report or such portion thereof as the board of education shall consider advantageous to the public, shall be published in a newspaper in the city or village, and in cities and villages of over eight hundred inhabitants, it may be published in pamphlet form.

14. To admit children of persons not living in such special district into the schools of such district, and to fix and collect the tuition therefor, if in its judgment the best interests of the school will permit.

15. To cause an enumeration of the children of school age within such special district, including those residing in any territory thereto attached for school purposes, to be made annually, as provided for other school districts, and return the same to the county superintendent.

§ 182, c. 62, 1890.

§ 798. Treasurer, custodian of school moneys. All moneys from whatever source, which the board of education of any special district shall by law be authorized to receive, shall be paid over to the treasurer of such board and he shall charge the same to the proper fund.

§ 183, c. 62, 1890.

§ 799. Schools under supervision of whom. The schools of each special district shall be under the immediate supervision of the board of education or the school superintendent appointed by such board, subject to such general directions and supervision by the county superintendent as are provided for in this chapter.

§ 184, c. 62, 1890.

§ 800. Taxable property. The taxable property of the whole school corporation including the territory attached for school purposes, shall be subject to taxation. All taxes collected for the benefit of the school shall be paid in money, and shall be placed in the hands of the treasurer, subject to the order of the board of education.

§ 185, c. 62, 1890.

§ 801. Annual school tax. The board of education shall on or before the twentieth day of July of each year levy a tax for the support of the schools of the corporation, including any expenditures allowed by law, for the fiscal year next ensuing, not exceeding in any one year thirty mills on the dollar on all the real and personal property within the district which is taxable according to the laws of this state, the amount of which levy the clerk of the board shall certify to the county auditor, who is authorized and required to place the same on the tax roll of such county to be collected by the county treasurer as other taxes 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 forthwith transmit to the clerk of the board of education.

§ 186, c. 62, 1890.

§ 802. Expenditures. Contracts. 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, after public notice for ten days previous to receiving such bids.

§ 187, c. 62, 1890.

§ 803. Treasurer. The treasurer of any city, town or village comprising a special district shall be treasurer of the board of education thereof.

§ 188, c. 62, 1890.

§ 804. Treasurer, duties of. The treasurer of each board of education shall keep a true account of the receipts and expenditures of the various funds separately, and shall prepare and submit in writing a quarterly report of the state of the finances of the district; and shall, when required, produce at any meeting of such board or any committee appointed for the purpose of examining his accounts, all books and papers pertaining to his office. He shall safely keep in his possession or under his control all school moneys coming into his hands, and shall pay out such moneys only upon a warrant signed by the president, countersigned by the clerk and attested by the corporate seal of the board.

§ 805. Treasurer's bond. The treasurer of the board shall execute a bond to such board, with sufficient sureties to be approved by the board, in such sum and as such board may from time to time require, as near as can be ascertained in double the amount of the moneys likely to come into his hands, conditioned for the faithful discharge of his duties as treasurer; which bond shall be in addition to his bond to the city, town or village. In case of the failure of the city, town or village treasurer to give such bond within ten days after being required so to do by such board of education, such treasurer's office shall become vacant, and the council or board of trustees of such city, town or village shall appoint another person in his place, who shall give such additional bond. § 189, c. 62, 1890.

§ 806. Board assumes control after equalization of debts and property. When any board of education shall be organized under the provisions of this article, it shall, after the equalization hereinafter provided for, assume control of the schools of the city, town or village and shall be entitled to the possession of all property of the former district or districts or parts thereof lying within such city, town or village, for the use of schools. Such board shall also be entitled to its due proportion of all moneys on hand and taxes already levied but not collected; and shall be liable for a proper amount of the debts and liabilities of such former district, to be determined in the manner provided in this chapter for the equalization, determination and division of debts, property and assets of school districts consolidated or divided. § 190, c. 62, 1890.

§ 807. Special district may become part of general district, when. Any special district organized under the general school laws and provided with a board of education may become a part of the school district in which it is located, whenever it is so decided by a majority vote of the school electors of the city, town or village and of such school district voting at an election called for that purpose. An election for such purpose shall be ordered and proper notice thereof given by the board of education and the school board of such district in the same manner as is required for the election of school officers in such district, when petitioned by one-third of the voters resident in such district, and when so united the determination and division of the debts, property and assets shall be made by arbitration as provided in this chapter for school districts consolidated or divided. Villages not incorporated but heretofore organized under the general school laws and provided with a board of education shall become a part of the school district in which they are located and the determination and division of the property, debts and assets shall be made by arbitration as aforesaid. § 191, c. 62, 1890.

§ 808. Election of boards of education in special districts. On the third Tuesday in June each year an election shall be held in each special district at which such members of the board of education shall be elected at large as shall be necessary to fill all vacancies therein caused by expiration of terms of office or otherwise, and each member elected shall serve for a term of three years commencing on the second Tuesday in July following his election and until his successor is elected and qualified, except when elected to serve an unexpired term. The polls shall be open at 9 o'clock A. M. and kept open until 4 o'clock P. M. on the day of such election. § 192, c. 62, 1890.
§ 34, c. 56, 1891.

§ 809. Notice of election, contents of. Such election shall be called by the board of education of such special district, which shall § 194, c. 62, 1890.

cause notice thereof to be posted or published as required by law for the annual election of civil officers in the city, town or village comprising such special district; such notice shall be signed by the clerk, or, in his absence, by the president of the board of education of such district, and shall state the time and place of holding such election and what officers are to be elected and their terms.

§ 194, c. 62, 1890.
am'd.

§ 810. Notice of election, form of. Such notice shall be in substantially the following form:

Notice is hereby given, that on Tuesday the day of June A. D., an annual election will be held at (here insert polling place) for the purpose of electing the following members of the board of education (here insert terms for which they are to be elected), for the city, town or village of (here insert name) and the polls will be open at nine o'clock A. M. and closed at four o'clock P. M. of that day.

By order of the board of education.

Signed

Clerk.

§ 195, c. 62, 1890.

§ 811. Election precincts and officers of election. At least fifteen days prior to such election the board of education of each special district shall designate one polling place and appoint two persons to act as judges and two persons to act as clerks. Before opening the polls each of such judges and clerks shall take an oath that he will perform his duties as judge or clerk (as the case may be) according to law and to the best of his ability, which oath may be administered by any officer authorized to administer oaths or by either of said judges or clerks to the others.

§ 196, c. 62, 1890.
am'd.

§ 812. Canvass of returns. Such election shall be conducted and the votes canvassed in the manner provided by law for elections of county officers, and returns shall be made showing the number of votes cast for each person for any office, which shall be signed by the judges and clerks of election, and the person receiving the highest number of votes for each office in the district shall be declared elected, and the returns shall be filed with the clerk of the board of education within two days thereafter.

§ 197, c. 62, 1890.

§ 813. Certificates of election. The clerk of the board shall give to each person elected at such election a certificate stating that he was duly elected as a member of the board of education and the time he is to take the oath and enter upon the duties of his office. Such clerk shall also certify as soon as possible to the county superintendent of schools the persons so elected and their terms.

§ 198, c. 62, 1890.

§ 814. Vacancies, how filled. The board of education of each city, town and village shall have power to appoint a person to fill any vacancy which may occur in the board; and such appointee shall hold his office until the next annual school election, at which time a person shall be elected to serve for the unexpired term; but if such vacancy shall occur within ten days before an annual election, such appointee shall hold office until the annual election in the following year. When any such appointment shall be made the clerk shall certify the same to the county superintendent.

§ 199, c. 62, 1890.
am'd.

§ 815. Oath of office. Before entering upon the duties of his office each person elected or appointed as a member of the board of education, shall take the oath or affirmation prescribed in section 211 of the constitution, which oath shall be filed with the clerk of the board.

§ 816. **Bonds, how and when may be issued.** Whenever the taxes authorized by law shall not be sufficient or shall be deemed by the board of education to be burdensome, bonds may be issued and negotiated for the purpose of raising money to purchase a site or to erect suitable buildings thereon, or to fund any outstanding indebtedness of the school corporation; provided, that the issuance of such bonds shall first be authorized by the voters of such special district as hereinafter prescribed. Such bonds shall be signed by the president and clerk and attested by the corporate seal of the board, shall bear the date of their issue, and be payable in not less than five nor more than twenty years from their date, at such place as shall be designated upon their face; and such bonds shall be in denominations of not less than one hundred dollars, shall bear interest at not more than seven per cent per annum, payable semi-annually on the first day of January and July in each year, shall show upon their face that they are issued for school purposes, and shall be sold at not less than par. Each bond shall have indorsed thereon the certificate of the clerk of the board stating that such bond is issued pursuant to law and is within the debt limit prescribed by the constitution. § 200, c. 62, 1890.

§ 817. **Election for issuing bonds.** Before issuing any such bonds the board of education shall call an election for the purpose of submitting to the voters of the district the question of issuing such bonds, notice of which shall be given in the manner prescribed by law, for giving notice of the annual election for the several officers of the city, town or village comprising such special district, except that such notice shall be given twenty days before such election. Such election shall be conducted and the returns made in the manner provided for the annual election of members of the board of education, and may be held at the time of the annual school election or at any other time named in such notice. The notice of such election shall clearly state the amount of the bonds proposed to be issued, the time in which they shall be made payable, the purpose for which they are to be issued, and the time and place such election will be held. At such election the voters shall have written or printed on their ballots "for issuing bonds" or "against issuing bonds" and if a majority of the votes cast is for issuing bonds such bonds shall be issued and negotiated by such board of education, but if a majority thereof is against issuing bonds such bonds shall not be issued, nor shall the question be again submitted for one year thereafter except for a different amount and then only upon a written petition of a majority of the voters of the district. § 201, c. 62, 1890.

§ 818. **Bonds to specify what. Debt limit.** The bonds, the issuance of which is provided for in the foregoing section, shall specify the rate of interest and the time when the principal and interest shall be paid; and no district shall issue bonds in pursuance of this article in a sum greater than five per cent of its assessed valuation, including other debts. § 202, c. 62, 1890.

§ 819. **Levy for interest and sinking fund.** The board of education at the time of its annual tax levy for the support of schools shall also levy a sufficient amount to pay the interest as the same accrues on all bonds issued under provisions of this article, and also to create a sinking fund for the redemption of such bonds, which it shall levy and collect in addition to the rate per cent authorized by the provisions aforesaid for school purposes, and such amount of funds when paid into the treasury shall be and remain a special fund § 203, c. 62, 1890.

for such purpose only and shall not be appropriated in any other way except as hereinafter provided. At or before the issuance of any bonds as herein provided the board shall by resolution provide for such annual levy to pay the interest and to create such sinking fund, and such resolution shall remain in force until all such bonds and the interest thereon shall have been paid.

§ 204, c. 62, 1890.

§ 820. Investment of sinking fund. All moneys raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under this article, shall be invested annually by the board of education in the bonds of this state or of the United States, or the board may buy and cancel the bonds of the district.

§ 205, c. 62, 1890.

§ 821. Interest coupons. When the interest coupons of the bonds hereinbefore authorized shall become due they shall be promptly paid, upon presentation, by the treasurer out of any moneys in his hands collected for that purpose, and he shall indorse in red ink upon the face of such coupons the word "paid" and the date of payment and sign the initials of his name.

§ 206, c. 62, 1890.

§ 822. Security for payment of bonds. The school fund and property of such school corporation and territory attached for such purposes is hereby pledged to the payment of the interest and principal of the bonds mentioned in this article as the same may become due.

§ 207, c. 62, 1890.

§ 823. Bond register. The clerk of the board of education shall register in a book provided for that purpose the bonds issued under this article and all warrants issued by the board, which register shall show the number, date and amount of such bonds and to whom payable.

§ 1, c. 59, 1891.
am'd.

§ 824. Refunding bonds, issuance of. The board of education of any special or independent school district shall have power, whenever two-thirds of the members of such board shall deem it necessary and for the best interests of such school district, to issue bonds for the purpose of refunding any outstanding bonds when the same become due. Such bonds shall not exceed in amount the face value of the bonds they are issued to replace, and shall not bear a higher rate of interest than seven per cent per annum, nor run for a longer period than twenty years.

§ 2, c. 59, 1891.

§ 825. Bonds may be exchanged. Such refunding bonds may be exchanged at par for an equal amount of outstanding bonds or may be sold at not less than par value and the proceeds applied solely to the payment of the bonds to be refunded, except that any premium that may be received on the sale of such bonds shall be kept as a separate fund and used for the payment of the interest on such bonds.

§ 3, c. 59, 1891.

§ 826. Issue of bonds, how governed. In the issuance of such refunding bonds the board of education shall be governed by the provisions of sections 818 to 823.

§ 4, c. 59, 1891.

§ 827. Surplus funds, how transferred. Any moneys remaining in the treasury of such school districts, appropriated or held for the purpose of paying such bonds so refunded, may, at the discretion of the board of education at any time within six months after such refunded bonds have been taken up and canceled, be transferred to the building or contingent fund of such district.

ARTICLE 18.—INDEPENDENT SCHOOL DISTRICTS.

§ 828. **Independent districts, how organized.** Any city heretofore organized for school purposes under a special law and provided with a board of education may become incorporated as an independent school district under the provisions of this article in the manner following. Whenever one-eighth of the legal voters of such city voting at the preceding municipal election shall petition the mayor and council thereof to submit the question as to whether such city shall establish an independent school district under this article 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 two years. § 1, c. 64, 1890.

§ 829. **Notice of election.** The mayor of such city shall cause at least twenty days' notice of such election to be given 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. § 2, c. 64, 1890.

§ 830. **Form of ballots. Returns.** The ballots to be used at such election shall be in the following form: "For establishing an independent school district" or "against establishing an independent school district." 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 establishing an independent school district, such independent school district shall thenceforth be deemed to be organized under this article and the board of education then in office shall thereupon exercise the powers conferred upon like officers in this article until their successors are elected and qualified. § 3, c. 64, 1890.

§ 831. **Boundaries of independent districts.** All that portion included within the corporate limits of any city together with the additions that are now or may be hereafter attached to such city limits shall be constituted and established an independent school district to be designated as the "Independent School District of the City of " and a board of education is hereby established for the same. § 4, c. 64, 1890.

§ 832. **Members of board, how elected. Quorum.** Such board shall consist of one member from each ward in the city, and when the city is divided into an even number of wards, then such city shall elect one member of such board at large. Such members shall hold their office for the term of two years and until their successors are elected and qualified. A majority of the members of such board shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn. The electors in each ward in such city shall elect one member of such board, and the electors of such city shall elect one member of the board at large. The wards having even numbers shall hold their election in each even numbered year and the wards having odd numbers shall hold their election in each odd numbered year. The member at large shall be elected biennially in the even numbered years. § 5, c. 64, 1890.

§ 6, c. 64, 1890.

§ 833. Date of election. Canvass of votes. The election referred to in the foregoing section shall be held on the third Monday in April of each year, at the usual polling place for municipal elections in each ward. The mayor shall have authority and he is hereby empowered to appoint two judges and one clerk for such election, who shall open the polls at the hour of eleven o'clock in the forenoon and hold the same open until five o'clock in the afternoon of the same day. Such election shall be conducted in all respects and the polls closed and votes canvassed in the same manner as municipal elections, and the judges shall have the same power and authority in all respects as the judges of election for municipal officers, and after the votes are canvassed the judges shall make their returns to the city clerk or auditor, as the case may be, within twenty-four hours after the polls are closed, and the city council shall canvass such returns and declare the result within three days thereafter, which result shall be entered upon the records of the city, and it shall be the duty of the city clerk or auditor to issue certificates of election to the persons declared elected. The judges and clerks of election shall receive the same compensation for their services as at municipal elections for mayor and aldermen.

§ 7, c. 64, 1890.

§ 834. Vacancies, how filled. If any vacancy occurs in the board for any cause, the remaining members thereof shall fill such vacancy by appointment until the next annual election, and at such election a new member shall be elected to fill the unexpired term.

§ 8, c. 64, 1890.

§ 835. Style and powers of board. The board so elected shall be a body corporate in relation to all the powers and duties conferred upon it by this article, and shall be styled "The Board of Education of the Independent School District of the City of (here insert the name of the city)" and as such shall have power to sue and be sued, contract and be contracted with, and shall possess all the powers usual and incident to such bodies corporate, and as shall be herein given, and shall procure and keep a common seal. At each annual meeting of the board the members thereof shall elect one of their number president of the board, and when he is absent a president pro tempore shall be appointed who shall preside during such absence. The members so elected shall each qualify by taking the prescribed oath of office within ten days after receiving their certificate of election, and shall assume the duties of the office at the annual meeting of the board held on the first Monday in May of each year.

§ 9, c. 64, 1890.

§ 836. Responsibility of board. The members of the board shall receive no compensation, nor be interested directly or indirectly in any contract for building or making any improvements or repairs provided by this chapter. They shall have the care and custody of all public property in such district pertaining to school purposes and the general management and control of all school matters.

§ 10, c. 64, 1890.

§ 837. Meetings of board. The regular meetings of the board shall be held on the first Tuesday of each month, and the board may hold special meetings upon notice. The regular meetings may be adjourned for any time shorter than one month. Special meetings may be called by the president, or in case of his absence or inability to act, by any three members of the board as often as necessary by giving a personal notice in writing to each member of the board or by causing such notice to be left at his place of residence at least forty-eight hours before the hour of such special meeting.

§ 838. **Secretary, duties of.** Such board shall appoint a secretary who shall hold his office during the pleasure of the board and whose compensation shall be fixed by the board. The secretary shall keep a record of the proceedings of the board and perform such other duties as the board may prescribe. Such record or a transcript thereof, certified by the secretary and attested by the seal of the board, shall be received in all courts as prima facie evidence of the facts therein set forth; and such records, and all books, accounts, vouchers and papers of the board shall at all times be subject to inspection by the members of such board or any committee thereof, or by any taxpayer of the district. For the purpose of economy the board may, if deemed advisable, appoint one of its own members secretary. The annual report of the secretary shall contain such items as may be required by the superintendent of public instruction. § 11, c. 64, 1890.

§ 839. **Powers of board.** The board shall have power and it shall be its duty to levy and raise from time to time by tax such sums as may be determined by the board to be necessary and proper for any of the following purposes: § 12, c. 64, 1890.

1. To purchase, exchange, lease or improve sites for school houses.
2. To build, purchase, lease, enlarge, alter, improve and repair school houses and their outhouses and appurtenances.
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages.
4. To procure fuel and defray the contingent expenses of the board, including the expenses of the secretary.
5. To pay teachers' wages after the apportionment of public moneys which may be by law appropriated and provided for that purpose.

§ 840. **Collection of tax.** The tax to be levied and collected as aforesaid by virtue of this article shall be collected in the same manner as other county taxes, and for that purpose the board of education shall have power to levy and cause to be collected such taxes as are herein authorized, and shall cause the amount for each purpose to be certified by the secretary to the county auditor in time to be added to and put upon the annual tax list of the county. And it shall be the duty of the county auditor to calculate and extend upon the annual assessment roll and tax list the tax so levied by such board, and such tax shall be collected as other county taxes are collected. § 13, c. 64, 1890.

§ 841. **Amount of tax limited.** The amount raised for teachers' wages and contingent expenses shall be only such as together with the public moneys coming to such district from the state and county fund and other sources shall be sufficient to maintain efficient and proper schools in such district. The taxes for the purchasing, leasing or improving of sites, and the building, purchasing, leasing, enlarging, altering or repairing of school houses shall not exceed in any year twenty mills on the dollar of the assessed valuation of the taxable property of the district, and the board of education is authorized and directed, when necessary, to borrow in anticipation, the amount of the taxes so to be raised, levied and collected as aforesaid. § 14, c. 64, 1890.

§ 842. **Authority to issue bonds.** The board of education of such district is authorized and empowered and it is its duty, whenever the board deems it necessary for the efficient organization and establishment of schools in such district, and when the taxes author- § 15, c. 64, 1890.
§ 1, c. 61, 1891.

ized by this article shall not be sufficient or shall be deemed by the board to be burdensome upon the taxpayers of the district, from time to time to issue bonds of the district in the denomination of not less than one hundred dollars, payable at a time not to exceed twenty-five years after date and bearing interest at a rate not to exceed seven per cent per annum, payable semi-annually, and upon their face to show that they are issued for school purposes, and cause the same to be sold at not less than par value and the money realized therefrom deposited with the city treasurer to the credit of such board of education; and when any bonds shall be so negotiated it shall be the duty of the board to provide by tax for the payment of the principal and interest of such bonds; provided, that at no time shall the aggregate amount of such bonds exceed thirty mills on the dollar of valuation of the taxable property of such district to be determined by the last city assessment.

§ 16, c. 64, 1890.

§ 843. Moneys paid to city treasurer. All moneys raised pursuant to the provisions of this article and all moneys which shall by law be appropriated to or provided for such district, shall be paid over to the city treasurer of the city, and the county treasurer shall from time to time, as he shall receive the county school funds, and at least once in each month, on the first Monday thereof, pay over to such city treasurer the proportion thereof belonging to such district; and for that purpose the board shall have power to cause all needful steps to be taken, including census reports or other acts or things, to enable such board to receive the school money belonging to such district, as fully and completely as though such district formed one of the school districts of the county where the same may be situated.

§ 17, c. 64, 1890.

§ 844. Bond of treasurer. The city treasurer of such city shall give a bond to such board of education in such sum as the board shall from time to time require, with two or more sureties to be approved by the board, conditioned for the safe-keeping of the school funds, which shall be in addition to his other bond; and such treasurer and the sureties upon such bond shall be accountable to the board for the moneys that come into his hands, and in case of failure of such treasurer to give such bond when required by the board, or within ten days thereafter, his office shall become vacant and the city council shall appoint another person in his place.

§ 18, c. 64, 1890.

§ 845. School funds, how kept and paid out. All moneys required to be raised by virtue of this article shall be paid in cash or in the warrants hereinafter provided, drawn on the school fund only, and such moneys and all moneys received by such district for the use of the common schools therein shall be deposited for safe-keeping with such city treasurer to the credit of the board of education and shall by him be safely kept separate and apart from any other funds until drawn from the treasury as herein provided. Such treasurer shall pay out the moneys authorized by this article only upon warrants drawn by the president, countersigned by the secretary and attested by the seal of such board of education.

§ 19, c. 64, 1890.

§ 846. General powers of board. The board shall have power and it shall be its duty:

1. To organize and establish such schools in the district as it shall deem requisite and expedient, and to change and discontinue the same.
2. To purchase, sell, exchange and hire school houses and rooms, lots or sites for school houses and to fence and improve the same.

3. To build, enlarge, alter, improve and repair school houses, outhouses and appurtenances as it may deem advisable upon lots and sites owned by the district.

4. To purchase, sell, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages and provide fuel for schools.

5. To have the custody and safe keeping of the school houses, outhouses, books, furniture and appurtenances, and to see that the ordinances of the city council in relation thereto are observed.

6. To contract with and employ all teachers in such schools and to remove them at pleasure.

7. To pay the wages of such teachers out of the money appropriated and provided by law for the support of common schools in such district, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised by this article.

8. To defray the necessary and contingent expenses of the board, including the compensation of the secretary.

9. To have in all respects the superintendence, supervision and management of the common schools of such district, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, grading, government and instruction, for the reception of pupils and their transfer from one school to another, for the suspension and expulsion of pupils subject to the same restrictions as are contained in subdivision 11 of section 797, and generally for their good order, prosperity and utility.

10. To prepare and report to the city council of the city such ordinances and regulations as may be necessary and proper for their protection, safe keeping, care and preservation of school houses, lots, and sites and appurtenances and all the property belonging to the district connected with or appertaining to the schools within the city limits, and to suggest proper penalties for the violation of such ordinances and regulations, and annually, on or before the first Monday in July, to determine and certify to the county auditor the rate of taxation in its opinion necessary and proper to be levied under the provisions of this article for the year commencing on the first day of July thereafter, and also at any time to determine how many and what denomination of bonds shall be issued and sold to pay the extraordinary outlays required.

§ 847. Visiting schools. Each member of the board shall visit all the public schools in the district at least twice in each year of his official term, and the board shall provide that each of such schools shall be visited by a committee of three or more of their number at least once during such term. § 20, c. 64, 1890.

§ 848. Nonresident pupils. Such board of education shall have power to allow the children not resident in such district, to attend the schools of such district under the control and care of such board, upon such terms as the board shall prescribe, fixing the tuition which shall be paid therefor. § 21, c. 64, 1890.

§ 849. Expenditures not to exceed revenues. It shall be the duty of the board in all its expenditures and contracts to have reference to the amount of money which shall be subject to its order during the current year for the particular expenditures in question and not to exceed that amount. § 22, c. 64, 1890.

§ 23, c. 64, 1890.

§ 850. Title to property of district. The title to all property belonging to any such independent school district shall be vested in such district for the use of the schools, and the same while used and appropriated for school purposes shall not be levied upon or sold by virtue of any warrant or execution or other process, nor be subject to any judgment or mechanic's lien or taxation for any purpose whatever; and the district in its corporate capacity may take, hold and dispose of any real and personal property transferred to it by gift, grant, bequest or devise for the use of common schools for the district, whether the same is transferred in terms to such district by its proper name or to any person or body for the use of such schools.

§ 24, c. 64, 1890.

§ 851. Real property. Title, how conveyed. Whenever any property is purchased by the board a conveyance thereof shall be taken in the name of such district; and whenever any sale of such property is made by the board a resolution in favor of such sale shall first be adopted and spread upon the records of the board, and the conveyance of such property shall be executed in the name of such district by the president of the board attested by the secretary under the seal thereof and acknowledged by such officers. Such president and secretary shall have authority to execute conveyances as aforesaid, with or without covenants of warranty on behalf of the district.

§ 25, c. 64, 1890.

§ 852. Report of city treasurer. It shall be the duty of the city treasurer at least fifteen days before the annual election for members of such board and as often as called upon by the board, to prepare and report to such board a true and correct statement of the receipts and disbursements of moneys under and pursuant to the provisions of this article, during the preceding year, which statement shall set forth under appropriate heads:

1. The money raised by the board under section 839.
2. The school moneys received from the county treasurer.
3. The money received under section 842.
4. All money received by the city treasurer, subject to the order of the board, specifying the sources from which it accrued.
5. The manner in which all money has been expended, specifying the amount under each head of expenditures and the board shall at least one week before such election, cause such statement to be published in all the newspapers of the city which will publish the same gratuitously.

§ 26, c. 64, 1890.

§ 853. City council to pass certain ordinances. The city council shall have the power and it shall be its duty to pass such ordinances and regulations as the board of education may recommend as necessary for the protection, preservation, safe keeping and care of the school houses, lots, sites, appurtenances, libraries and all necessary property belonging to or connected with the schools of the city, and to provide proper penalties for the violation thereof; and all penalties shall be collected in the same manner that the penalties for the violation of city ordinances are collected, and when collected shall be paid to the city treasurer and placed to the credit of the board of education, and shall be subject to its order as herein provided.

§ 27, c. 64, 1890.

§ 854. Forfeit for refusal to serve as member of board. It shall be the duty of the clerk of such board immediately after the election of any person as a member thereof, personally or in writing to notify him of his election, and if any person shall not within ten days after receiving such notice of election, take and subscribe the oath as herein provided and file the same with the city auditor, the

board may consider it as a refusal to serve, and fill the vacancy thus occasioned, and the person so refusing shall forfeit and pay to the city treasurer for the benefit of the schools of such district a penalty of fifty dollars, which may be recovered in the name of such city by a civil action.

§ 855. **New district to assume debts of old.** School districts created under the provisions of this article shall assume all obligations and liabilities incurred by the districts out of which they are formed, if old districts are not divided, and a proportionate part, if divided. § 28, c. 64, 1890. am'd.

ARTICLE 19. — BOARDS OF EDUCATION IN CERTAIN CITIES.

§ 856. **Boards to be elected at large.** In each city not organized under the general law there shall be a board of education consisting of seven members having the qualifications of electors who shall be elected at large by the electors of such city qualified to vote at school elections; and, except as may be otherwise provided herein for the first election, two members of such board shall be elected annually and three triennially at a special election to be held on the first Tuesday after the first Monday in June; provided, that the provisions of this article shall not apply to cities existing under a special act and which are now conducting their schools under the general school laws. § 1, c. 65, 1890.

§ 857. **Term of office.** The term of office of a member of the board of education, except as in this article otherwise provided, shall be three years and until his successor is elected and qualified. § 2, c. 65, 1890.

§ 858. **Elections, how conducted.** All elections under the provisions of this article shall be called, conducted and the votes canvassed and returned in the manner provided by law for general city elections. § 4, c. 65, 1890.

§ 859. **Relatives not eligible as teachers.** No son, wife or daughter of any member of the school board shall be eligible to a position as teacher in schools of the district which such member represents, except upon the consent of all the members of such board. § 5, c. 65, 1890.

§ 860. **Independent school organizations under special laws abolished.** Any independent district organized for school purposes under a special law, which does not include or is not included in any city or incorporated town or village organized for municipal purposes, shall become a part of the school district in which it is located by the repeal of the special law organizing or governing such independent district. Any independent district organized for school purposes under a special law or under any other law than is contained in this chapter, which includes or is included in any city or incorporated town or village organized for municipal purposes, shall become a special district by the repeal of the special law organizing or governing such independent school district. Any school district or special district so constituted or constituted in part shall be governed by the provisions of this chapter; provided, that nothing herein shall prevent any such independent district from coming under the operation of this chapter in the manner therein provided. § 1, c. 63, 1891.

§ 861. **Old school officers hold over.** The board of education or other governing board of such independent district shall continue to exercise the powers and duties devolving upon it under the § 2, c. 63, 1891.

provisions of such special or other law governing such independent district, the same as though such law had not been repealed, until the second Tuesday in July following the repeal of such special or other law; provided, that all that portion of the general school laws which provides for an annual school election shall apply to such independent district and shall be in full force and effect for the purpose of electing school officers at such annual school election; and such officers shall be elected in and for the whole school district, including the independent district or portion of such independent district located therein, or in and for the special district, the same as though no law had ever existed providing for the organization of such independent district; provided, further, that in a special district formed and created as herein provided, a full board of education shall be elected as provided by law for first elections, but in school districts formed and created as herein provided by the addition of such independent district or portion thereof, there shall be elected only such officers as are required to fill the regular vacancies in the school offices of such school district heretofore organized.

§ 862. **Debts and assets determined by arbitration.** When the boundaries of such school district shall have been arranged as contemplated in this article, the determination and division or consolidation of all debts, property and assets of the several portions of such district or districts so consolidated shall be made by arbitration as provided by law.

ARTICLE 20. — FREE TEXT BOOKS.

§ 863. **Power of school boards.** The school board of any city, town or district in this state is hereby authorized and empowered to select, adopt or contract for the text books and other supplies needful for the use of the school or schools under its charge; and such board shall have power to purchase the text books selected or contracted for, and provide for the loan free of charge, or sale at cost, of such text books to the pupils in attendance at such school or schools as provided for in the next section.

§ 864. **Proposition submitted to electors.** Upon the petition of a majority of the qualified electors the school board of any city, town or district shall submit at the next annual school election to the legal voters thereof the question of providing free text books and other school supplies for the use of the pupils attending the schools under its charge. In case a majority of the legal voters present and voting shall vote in favor of free text books and other school supplies, the school board of such city, town or district so voting shall purchase, at the expense of such city, town or district, text books and other school supplies used in the public or common schools, and said text books and supplies shall be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school board may prescribe.

ARTICLE 21. — PURCHASE OF FLAGS FOR SCHOOL DISTRICTS.

§ 865. **United States flag to be displayed.** The school board of each city, town and district is authorized and required to purchase at the expense of the city, town or district one or more flags

of the United States, which shall be displayed upon the school houses or flagstaffs upon the school grounds during the school hours of each day's session of school.

ARTICLE 22.—STATE EDUCATIONAL LIBRARY.

§ 866. **Appropriation for.** There is hereby appropriated out of any funds in the state treasury the sum of three hundred dollars annually, to be paid by warrant of the state auditor on the state treasurer upon the presentation of an itemized bill in due form by the superintendent of public instruction, for the purchase of reference or pedagogical books for the state educational library in the office of such superintendent. § 1, c. 32, 1891.

ARTICLE 23.—HIGH SCHOOL BOARD.

§ 867. **High school board.** The governor, superintendent of public instruction and president of the state university, are hereby constituted a board of commissioners on preparatory schools for the encouragement of higher education in the state. Said board shall be called the "High School Board" and shall perform the duties and have and exercise the powers hereinafter mentioned. § 1, c. 53, 1895.

§ 868. **Students classified.** Any public graded school in any city or incorporated village or township organized into a district under the township or district system, which shall give instruction according to the terms and provisions of this article, and admit students of either sex from any part of the state, shall be entitled to be classified as a state high school; provided, however, that no such school shall be required to admit nonresident pupils unless they shall pass an examination in orthography, reading, penmanship, arithmetic, grammar, modern geography and United States history. § 2, c. 53, 1895.

§ 869. **Requirements for classification.** The board shall require of the schools desiring to be classified as state high schools, compliance with the following requirements: § 3, c. 53, 1895.

1. That there be regular and orderly courses of study, embracing all the branches prescribed by said board, for the first two years of the high school course.

2. That the schools classified as state high schools under this article shall at all times permit the board of commissioners, or any member thereof, to visit and examine the classes pursuing such preparatory courses.

§ 870. **School visited once each year.** The board of commissioners shall cause each school classified as a state high school under this article to be visited, at least once in each school year, by a committee of one or more members, who shall carefully inspect the instruction and discipline of such high schools and make a written report on the same immediately; provided, that the board may, in its discretion, appoint in any case, competent persons to visit and inspect any schools and to make report thereon; and no school shall be classified as a state high school in any case until after such report shall have been received and examined by the board and the work of the school approved by a vote of the board. § 4, c. 53, 1895.

§ 871. **No compensation.** The members of said board shall serve without compensation. § 5, c. 53, 1895.

§ 6, c. 53, 1895.

§ 872. Discretionary powers. The high school board shall have full discretionary power to consider and act upon applications of schools for classification and to prescribe the conditions upon which such classification shall be made; and it shall be its duty to accept such schools only as will, in its opinion, if accepted, efficiently perform the service contemplated by law. Any school once accepted and continuing to comply with this article and with the regulations of the board made in pursuance thereof, shall be so classified not less than three years. The board shall have power to establish any necessary and suitable rules and regulations relating to examinations, reports, acceptance of schools, courses of studies, and other proceedings under this article.

§ 7, c. 53, 1895.

§ 873. Shall keep record. The board shall keep a careful record of all its proceedings and shall make on or before the first day of December in each year, a report, covering the previous school year, to the superintendent of public instruction, showing the names and number of schools classified as state high schools and the number of pupils attending the classes in each to which report it may add such recommendations as it may deem useful and proper.

ARTICLE 24.—HEALTH AND DECENCY IN PUBLIC SCHOOLS.

§ 1, c. 55, 1895.

§ 874. Duty of boards of education. It shall be the duty of all boards of education and district school boards in this state to provide suitable and convenient water closets or privies for each of the schools under their charge, at least two in number, which shall be entirely separate each from the other, and having separate means of access; and it shall be the duty of the school officers aforesaid to keep the same in a clean, chaste and wholesome condition; and a failure to comply with the provisions of this article on the part of any board of education or district school board, shall be sufficient grounds for removal from office and for withholding from any district any part of the public moneys of the state. The expense incurred by the officers aforesaid in carrying out the requirements of this article shall be a charge upon the district, when such expense shall have been approved by the county superintendent of schools of the county within which the school district is located, and a tax may be levied therefor without a vote of the district.

CHAPTER 10.

EDUCATIONAL AND CHARITABLE INSTITUTIONS.

ARTICLE 1.—UNIVERSITY OF NORTH DAKOTA.

§ 1, c. 40, Sp.
1883,
am'd.

§ 875. University, where located. The university of North Dakota as now established and located at the city of Grand Forks shall continue to be the university of the state.

§ 2, c. 40, Sp.
1883,
§ 1, c. 168, 1887.

§ 876. Board of trustees to govern. The government of such university shall be vested in a board of trustees consisting of five members to be appointed by the governor by and with the advice and consent of the senate, who shall hold their office for the term of four years commencing on the first Tuesday in April next succeeding their appointment.

§ 877. Governor to nominate. Vacancies, how filled.

The governor shall nominate and, by and with the advice and consent of the senate, appoint during each regular session of the legislative assembly trustees of such university in the place of those whose terms shall thereafter first expire, and such trustees shall hold their office until their successors are appointed and qualified; provided, that the governor shall fill any vacancy in such board by appointment to extend only until the first Tuesday in April succeeding the next regular session of the legislative assembly; and provided, further, that the governor shall during such next regular session nominate and, by and with the advice and consent of the senate, appoint some person to fill such vacancy for the remainder of the term unexpired. Not more than two members of the board shall be appointed from the same county.

§ 878. Powers and duties of board. The board of trustees shall possess all the powers necessary to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and all other property of such university. The board shall elect a president and a secretary who shall perform such duties as may be prescribed by the by-laws of the board. The secretary shall keep a correct record of all transactions of the board, and of the committees thereof, and in addition to performing the duties of secretary, he shall be the superintendent of the buildings and grounds of the university and discharge such other duties as may from time to time be prescribed by the board of trustees.

§ 3, c. 40, Sp.
1883.
§ 1, c. 168, 1887.
am'd.

§ 879. Meetings of the board. The time for the election of the president and secretary of such board and the duration of their respective terms of office, the time for holding the regular annual meeting, and such other meetings as may be required, and the manner of giving notice of the same shall be determined by the board. Four members shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

§ 4, c. 40, Sp.
1883.
§ 2, c. 168, 1887.

§ 880. Number of meetings limited. Such board shall not hold more than twelve sessions in any year and such sessions shall not exceed twenty-four days in the aggregate; but the governor may in his discretion authorize additional sessions.

§ 3, c. 93, 1889.
am'd.

§ 881. Government of university. Powers of trustees. The board of trustees shall adopt rules for the government of the university in all its branches; elect a president and the requisite number of professors, instructors, officers and employees, fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction, either sectarian in religion or partisan in politics shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of trustees, or in the election of professors, teachers or other officers of the university, or in the admission of students thereto or for any purpose whatever. Such board shall have power to remove the president or any professor, instructor or officer of the university, when in its judgment the interests of the university require it. The board may prescribe rules and regulations for the management of the library, cabinets, museum, laboratories and all other property of the university and of its several departments and for the care and preservation thereof, with suitable penalties and

§ 3, c. 40, Sp.
1883.

forfeitures by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction.

§ 6, c. 40, Sp.
1883.

§ 882. Board may expend income. The board is authorized to expend such portion of the income of the university fund as it may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto; and, if deemed expedient, it may unite with the university as a branch thereof any college in the state, upon application of its board of trustees; and such college so received shall become a branch of the university and be subject to visitation by the trustees.

§ 7, c. 40, Sp.
1883.

§ 883. Board to make report, when. At the close of each fiscal year the trustees through their president shall make a report in detail to the governor, exhibiting the progress, condition and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with the nature, cost and results of all important investigations and experiments and such other information as they may deem important, one copy of which shall be transmitted free by the governor to each college endowed under the provisions of the act of congress entitled "An act donating land to the several states and territories which provide colleges for the benefit of agriculture and mechanic arts," approved July 2, 1862, and also one copy to the secretary of the interior.

§ 8, c. 40, Sp.
1883.

§ 884. Powers of the president and faculty. The president of the university shall be president of the several faculties and the executive head of the instructional force in all its departments; as such, he shall have authority, subject to the power of the board of trustees to give general directions respecting the instruction and scientific investigation of the several colleges, and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships. The immediate government of the several colleges shall be intrusted to their respective faculties, but the trustees shall have the power to regulate the course of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other causes prescribed in such by-laws.

§ 9, c. 40, Sp.
1883.
§ 3, c. 168, 1887.
§ 1, c. 180, 1890.

§ 885. Object and departments of the university. The objects of the university shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, in the instruction and training of persons in the theory and art of teaching, and also instruction in the fundamental laws of this state and of the United States in regard to the rights and duties of citizens, and to this end it shall consist of the following branches or departments:

1. The college or department of arts.
2. The college or department of letters.
3. The normal college or department.
4. The school of mines, the object of which shall be to furnish facilities for the education of such persons as may desire to receive instruction in chemistry, metallurgy, mineralogy, geology, mining, milling and engineering.

5. The military department or school, the object of which shall be to instruct and train students in the manual of arms and such military maneuvers and tactics as are taught in military colleges.

6. Such professional or other colleges or departments as now are or may from time to time be added thereto or connected therewith, and the board of trustees is hereby authorized to establish such professional and other colleges or departments as in its judgment may be deemed necessary and proper; but no money shall be expended by the board in establishing and organizing any of the additional colleges or departments provided for in this section, until an appropriation therefor shall have first been made.

§ 886. Courses of instruction. The college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to industrial arts such as agriculture, mechanics, engineering, mining, and metallurgy, manufactures, architecture and commerce and such branches included in the college of letters as shall be necessary properly to fit the pupils in the scientific and practical courses for their chosen pursuits, and in military tactics. In the normal department the proper instruction and learning in the theory and art of teaching and in all the various branches and subjects needful to qualify for teaching in the common schools; and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the courses of sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be co-existent with the college of arts, and shall embrace a liberal course of instruction in languages, literature and philosophy, together with such courses or parts of courses in the college of arts as the trustees shall prescribe. § 10, c. 40, Sp. 1883.

§ 887. Scandinavian language taught. It shall be the duty of the trustees to cause to be taught at said institution the Scandinavian language, and for that purpose shall employ as one of the teachers of such institution a professor learned in that language. § 1, c. 60, 1891.

§ 888. Pupils, who may become. The university shall be open to students of both sexes under such regulations and restrictions as the board of trustees may deem proper, and all able bodied male students of the university may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state. § 11, c. 40, Sp. 1883.

§ 889. Graduates entitled to certificates to teach. After any person has graduated at the university, and after such graduation has successfully taught a public school in this state for sixteen months, the superintendent of public instruction shall have authority and it shall be his duty to countersign the diploma of such teacher if upon examination he is satisfied that such person has a good moral character and is possessed of sufficient learning and ability to teach. Any person holding a diploma granted by the board of trustees of such university, certifying that the person holding the same has graduated from such university, shall, after his diploma has been countersigned by the superintendent of public instruction as aforesaid, be deemed qualified to teach any of the public schools in the state, and such diploma shall be a certificate of such qualification until annulled by the superintendent of public instruction. § 11, c. 40, Sp. 1888, am'd.

- § 12, c. 40, Sp.
1883. **§ 890. Tuition fees.** No student who shall have been a resident of the state for 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 trustees may prescribe rates of tuition for any pupil in the law department, or who is not a resident as aforesaid, and for teaching extra studies.
- § 4, c. 93, 1889.
am'd. **§ 891. Compensation of trustees.** The trustees shall be entitled to receive the sum of three dollars per day for each day employed in attendance upon sessions of the board and all traveling expenses necessarily incurred thereby. Upon the presentation of the proper vouchers containing an itemized statement of the number of days attendance and money actually expended as above specified, duly verified by the oath of the trustee and certified by the president and secretary of the board, the state auditor shall audit such claim and draw his warrant upon the state treasurer for the amount allowed.
- § 17, c. 40, Sp.
1883. **§ 892. Trustees to make rules and by-laws.** The board of trustees shall make rules, regulations and by-laws for the government and management of the university and of each department thereof. It shall also prescribe rules, regulations and by-laws for the admission of students; but each applicant for admission must undergo an examination to be prescribed by the board, and shall be rejected if it shall appear that he is not of good moral character. The board shall also require each applicant for admission in the normal department, other than such as shall, prior to admission, sign and file with such board a declaration of intention to follow the business of teaching in the common schools of this state for at least one year, to pay such fees for tuition as the board may deem proper and reasonable.
- § 2, c. 42, Sp.
1883. **§ 893. Salaries.** The board of trustees shall from time to time fix the salary of the president, professors and teachers of such university, and shall certify the same to the state auditor. Such board shall also from time to time certify to the state auditor the amount due such persons for salary, and the state auditor shall draw his warrants upon the state treasurer for the amounts so certified.
- § 1, c. 179, 1890. **§ 894. Secretary of state to furnish laws.** The secretary of state shall deliver to the university fifty copies of each volume of the general and special laws of the state, and the reports of the decisions of the supreme court, hereafter published, for use in the way of exchanges and otherwise in the establishment and maintenance of a law library for the law department of such university.
- § 2, c. 179, 1890. **§ 895. Supreme court reports, how obtained.** He shall procure for the purpose aforesaid from the publishers of the supreme court reports fifty copies of each volume thereof hereafter published, in addition to the number authorized for other purposes, to be paid for at the same price and in the same manner as such reports are delivered to the secretary for other purposes.
- § 1, c. 181, 1890. **§ 896. Loan of muskets authorized.** The adjutant general or whoever may be in charge of state arms shall, under the direction of the governor, loan to the board of trustees of such university one hundred muskets and accoutrements or as many as can be spared, not exceeding that number, the same to be used for drill purposes, by the students of such university.
- § 2, c. 181, 1890. **§ 897. Muskets, when returned.** In case such arms and accoutrements are needed by the state at any time, the governor or adjutant general under his instructions may call in the same and the

trustees of such university shall immediately turn the same over to such officer in good condition.

§ 898. **Geological survey. Duty of trustees.** It shall be the duty of the board of trustees of the university to cause to be begun as soon as may be practicable, and to carry on a thorough geological and natural history survey of the state. § 1, c. 66, 1895.

§ 899. **Extent of the survey.** The geological survey shall be carried on with a view to a complete account of the mineral kingdom, as represented in the state, including the number, order, dip and magnitude of the several geological strata, their richness in ores, coals, clays, peats, salines and mineral waters, marls, cements, building stones and other useful materials, the value of said substances for economical purposes, and their accessibility; also an accurate chemical analysis of the various rocks, soils, ores, clays, peats, marls and other mineral substances of which a complete and exact record shall be made. § 2, c. 66, 1895.

§ 900. **Meteorological statistics tabulated.** The board of trustees shall also cause to be collected and tabulated such meteorological statistics as may be needed to account for the varieties of climate in the various parts of the state; also to cause to be ascertained by barometrical observations or other appropriate means, the relative elevations and depressions of the different parts of the state; and also on or before the completion of such surveys to cause to be compiled from such actual surveys and measurements as may be necessary an accurate map of the state; which map when approved by the governor shall be the official map of the state. § 3, c. 66, 1895.

§ 901. **Specimens collected.** It shall be the duty of said board to cause proper specimens, skillfully prepared, secured and labeled, of all rocks, soils, ores, coals, fossils, cements, building stones, plants, woods, skins and skeletons of animals, birds, insects and fishes, and other mineral, vegetable and animal substances and organisms discovered or examined in the course of said surveys, to be preserved for public inspection free of cost, in the university of North Dakota, in rooms convenient of access and properly warmed, lighted, ventilated and furnished, and in charge of a proper scientific curator; and they shall also, whenever the same may be practicable, cause duplicates in reasonable numbers and quantities of the above named specimens, to be collected and preserved for the purpose of exchange with other state universities and scientific institutions, of which latter the Smithsonian institution at Washington shall have the preference. § 4, c. 66, 1895.

§ 902. **Map of the state.** The board shall cause a geological map of the state to be made as soon as may be practicable, upon which by colors and other appropriate means and devices the various geological formations shall be represented. § 5, c. 66, 1895.

§ 903. **Annual report of trustees.** It shall be the duty of the board, through its president, to make on or before the second Tuesday in December of each year, a report showing the progress of said surveys, accompanied by such maps, drawings and specifications as may be necessary and proper to exemplify the same to the governor, who shall lay the same before the legislative assembly, and the board upon the completion of any separate portion of any of the said surveys shall cause to be prepared a memoir or final report which shall embody in a convenient manner all useful and important information accumulated in the course of the investigation of the particular department or portion; which report or memoir shall likewise be communicated through the governor to the legislative assembly. § 6, c. 66, 1895.

§ 7, c. 86, 1895. **§ 904. State geologist.** The professor of geology in the university shall be ex officio state geologist.

ARTICLE 2. — NORMAL SCHOOLS.

§ 1, c. 89, 1891.
am'd. **§ 905. Normal schools located.** The normal school as established and located at the city of Mayville in the county of Traill, and the normal school as established and located at the city of Valley City in the county of Barnes, shall continue to be the normal schools of the state.

§ 2, c. 89, 1891. **§ 906. Endowment and maintenance.** All proceeds accumulating in the interest and income fund arising from the sale or rental of the lands granted or hereafter to be granted by the state of North Dakota, for such normal schools, are hereby pledged for the establishment and maintenance of such schools.

§ 3, c. 89, 1891. **§ 907. Management of.** The government and management of such schools are vested in a board of trustees to be known as the board of trustees of the state normal schools, and in a board of management for each school to be known as the board of management of the normal school at Mayville, and the board of management of the normal school at Valley City respectively.

§ 4, c. 89, 1891. **§ 908. Boards, how constituted.** The board of management for each normal school shall consist of five members. The board of trustees of such normal schools shall consist of twelve members, ten of whom shall be the members of the respective boards of management as herein provided. The governor and superintendent of public instruction shall be ex officio members of such board of trustees, and the superintendent of public instruction shall act as president of such board.

§ 6, c. 89, 1891. **§ 909. Terms of trustees.** The governor shall by and with the advice and consent of the senate appoint during each biennial session of the legislative assembly, five members of such board of trustees who shall hold their office for four years commencing on the second Tuesday in April following such appointment. The governor shall fill all vacancies therein by appointment for unexpired terms. At the first meeting of the board of management of each normal school the members thereof shall take and subscribe the oath of office required of all civil officers and shall proceed to elect a president who shall reside in the vicinity of such normal school, and the principal of the school shall be the secretary of the board but shall have no vote. In the absence of the principal the board may select one of its members to act as secretary. A majority of the members of the board of management shall constitute a quorum for the transaction of business.

§ 7, c. 89, 1891. **§ 910. Commissions. Secretary.** The governor shall cause to be issued to each of the members of the board of trustees a commission under the great seal of the state, and such commission shall designate the board of management upon which such members shall serve. At the first meeting of the board the members thereof shall proceed to select and appoint a secretary of the board. A majority of the members of the board of trustees shall constitute a quorum for the transaction of business.

§ 9, c. 89, 1891. **§ 911. Meetings. Compensation.** The board of trustees shall meet at Valley City and at Mayville or at the seat of government at such time each year as may be decided upon by the board. The

members of the board shall receive their actual and necessary expenses in attending meetings of the board or in other duties connected therewith, which expenses shall be paid out of the state treasury upon the vouchers of the board approved by the state auditor, who shall issue his warrant upon the state treasurer for the amount so approved. The board of trustees shall not be in session for exceeding eight days in any one year nor either board of management to exceed twelve days during each year. The secretary of the board of trustees shall receive such salary as shall be determined by the board not exceeding one hundred dollars a year and his actual expenses incurred in attending meetings of the board, which shall be paid as herein provided for members of the board of trustees.

§ 912. **Treasurer to keep funds.** All moneys arising from the interest and income derived from the rental and sale of the lands appropriated to such schools and all moneys that may hereafter be appropriated by the state, including all moneys raised in any other manner for either of such schools shall be deposited with the state treasurer, to be by him kept in two separate funds, to be known as the fund of the state normal school at Mayville, and the fund of the state normal school at Valley City, respectively, and such funds shall be used exclusively for the benefit of such schools. § 11, c. 89, 1891.

§ 913. **Objects of normal schools.** The objects of such normal schools shall be to prepare teachers in the science of education and the art of teaching in public schools. The board of trustees, with the assistance of the respective faculties, shall adopt the full course of study prescribed for that purpose, which shall embrace the academic and professional studies usually taught in normal schools. Such schools shall in all things be free from sectarian control. § 13, c. 86, 1891.

§ 914. **Duties of board as to appropriations.** The board of management of each normal school shall direct the disposition of all moneys appropriated by the legislative assembly for current expenses for such school, and shall have supervision and charge of the construction of all buildings authorized by law for such school, and shall direct the disposition of all moneys appropriated therefor or accumulating therefor as provided in this article. They shall have power to appoint one of their members superintendent of construction of all buildings, who shall receive three dollars per day for each day actually and necessarily engaged in the discharge of his duties, not to exceed fifty days in any one year, which sum shall be paid out of the state treasury as herein provided; but all expenditures incurred under the direction of either of the boards aforesaid shall be audited and allowed by such board of management and the expenditures incurred under the direction of the board of trustees aforesaid shall be audited and allowed by such board. § 14, c. 89, 1891.

§ 915. **Salaries of employees. Reports.** The board of management of each normal school shall have the care of the buildings belonging to such school. It shall have power to fix the salaries of employees, except members of the faculty, and to prescribe their respective duties, and to remove any of such employees at any time. It shall at such times as may be determined upon propose to the board of trustees the names of persons as principal, teachers and instructors, with the recommendation that such persons be employed by such board of trustees as the faculty of such school. It shall on or before the third Monday in November of each year, make an annual report to the board of trustees, showing a statement of all § 15, c. 89, 1891.

expenditures of funds under its direction, the erection and care of buildings, the condition of the schools, and containing such recommendations as they may think proper.

§ 16, c. 89, 1891. **§ 916. Salaries of principal and teachers.** The board of trustees shall fix the salaries of the principal, teachers and instructors, and shall employ the persons therefor that have been recommended by the respective boards of management, unless in the opinion of the board of trustees a reasonable ground exists for refusing to employ such person. The board of trustees shall prescribe the time and the length of the various terms of such schools.

§ 17, c. 89, 1891. **§ 917. The faculty, duties of.** The faculty shall consist of the principal, teachers and instructors employed for each school as herein provided. They shall pass all needful rules and regulations for the government and discipline of the schools, regulating the routine of labor, study, meals and the duties and exercises and such other rules and regulations as are necessary for the preservation of morals, decorum and health. They shall carry out the course of study adopted by the board of trustees and shall arrange for the classification of all pupils in conformity therewith.

§ 18, c. 89, 1891.
am'd. **§ 918. Duty of principal.** The principal shall be the chief executive officer of the school and it shall be his duty to see that all the rules and regulations are executed. The subordinate officers and employees shall be under his direction and supervision.

§ 19, c. 89, 1891.
am'd. **§ 919. Annual report of faculty.** The faculty shall, on or before the third Monday in October in each year make an annual report to the board of trustees showing the general condition of the school and containing such recommendations as the welfare of the institution demands.

§ 20, c. 89, 1891.
am'd. **§ 920. Biennial reports to governor.** The board of trustees shall make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing the several reports of the boards of management and faculties herein provided for, showing the condition of the funds appropriated for the school, the money expended and the purpose for which the same was expended, in detail, and showing the condition of the normal schools generally.

§ 21, c. 89, 1891. **§ 921. Diplomas.** The board of trustees and the respective faculties of each school shall have power to issue diplomas to all persons who shall have completed the course of study prescribed for the normal schools as herein provided, and who shall have passed a satisfactory examination under the direction of the board of trustees, upon the branches contained in such course, and who shall be known to possess a good moral character, which diploma shall set forth the above mentioned facts and shall be designated the state normal school diploma.

§ 22, c. 89, 1891. **§ 922. State professional certificate.** Any person who is the holder of such a diploma and who can furnish satisfactory evidence to the superintendent of public instruction that he has had three years' successful experience as a teacher, shall be granted by the superintendent of public instruction a state professional certificate, valid for life, as provided by law, and any such person who can furnish satisfactory evidence of one year's successful experience as a teacher shall be granted such certificate, valid for five years, as provided by law. The fees for such certificate shall be as provided by law.

ARTICLE 3. — NORTH DAKOTA ACADEMY OF SCIENCE.

§ 923. **Academy of science, location of.** The North Dakota academy of science heretofore established at Wahpeton is hereby continued as such. The object of such academy shall be to furnish instruction in such arts and sciences as the board of trustees shall prescribe. Such academy shall contain a preparatory department where all the various branches shall be taught pertaining to a good common school education. § 1, c. 153, 1890. am'd.

§ 924. **Management.** Such school shall be under the direction of a board of trustees and shall be governed and supported as hereinafter provided. § 2, c. 153, 1890.

§ 925. **Board, how appointed.** Such board shall consist of five members, three of whom shall be appointed by the governor as follows: During each biennial session of the legislative assembly the governor shall nominate and, by and with the advice and consent of the senate, appoint one member of such board who shall hold his office for the period of six years, commencing on the first Tuesday in April succeeding such appointment, and until his successor is appointed and qualified and the governor may fill vacancies in such board by appointment as in other cases. The state treasurer and superintendent of public instruction shall be ex officio members of such board; and the members thereof shall annually elect from their number a president and secretary. It shall be the duty of the secretary to keep a detailed account of the acts of the board, and he shall make such reports to the legislative assembly as are required by this article. § 3, c. 153, 1890. am'd.

§ 926. **Powers of board.** Such board shall have power to appoint a principal and assistant to take charge of such school, and such other teachers and officers as may be required and fix the salaries of each, and prescribe their several duties. It shall also have power to remove either the principal, assistant or teachers and appoint others in their stead. The board shall prescribe the various books to be used in such school and shall make all the regulations and by-laws necessary for the good government and management of the same, and shall have power to procure all necessary apparatus, instruments and appurtenances for instruction in such schools. § 4, c. 153, 1890.

§ 927. **Rules and regulations.** The board shall prescribe such rules and regulations for the admission of pupils to said school as it shall deem necessary and proper. Each applicant for admission shall undergo an examination in such manner as shall be prescribed by the board. And the board may in its discretion require applicants for admission into such school to pay or secure to be paid such fees or tuition as the board shall deem reasonable. § 5, c. 153, 1890.

§ 928. **Official school visits.** There shall be appointed annually by the board three persons, not members of such board, whose duty it shall be to visit such school at least once in each year and report to the superintendent of public instruction their views in regard to its condition, success and usefulness, and any other matters which they may deem expedient. § 10, c. 153, 1890.

§ 929. **Expenses of board, how paid. Faculty, how paid.** All necessary expenses incurred by members of the board of trustees under the provisions of this article shall be paid on the proper voucher out of any funds belonging to such institution in the hands of the state treasurer, but they shall receive no other compensation. The § 12, c. 153, 1890.

principal, assistant, teachers, board of trustees and other officers employed in such school shall be paid out of the fund of the North Dakota academy of science.

§ 13, c. 158, 1890.
§ 1, c. 159, 1890.

§ 930. Appropriation for construction and maintenance.

All moneys received from the interest and income derived from the sale or leasing of the forty thousand acres of land donated by congress and appropriated by the constitution of this state for the benefit of such school, are hereby appropriated for the construction and maintenance thereof.

§ 14, c. 158, 1890.

§ 931. Temporary funds, how secured. Certificates issued.

To provide temporarily for the erection and maintenance of such academy the board of trustees may receive such sums of money as can be actually used in the construction of permanent buildings, procuring ground whereon to build the same, and other needed and necessary improvements to be made and expenses incurred in connection therewith, not exceeding the sum of ten thousand dollars, and to each person, association, or corporation so subscribing and advancing money as aforesaid, the board shall issue a certificate stating the date of issue and the amount of subscription, which certificate shall bear interest at not exceeding six per cent per annum and shall be made payable from the funds to accumulate in the interest and income fund arising from interest on the permanent fund or from rents received for any lands set apart for such academy, or from any appropriation that may hereafter be made for that purpose; provided, that until a sufficient amount of money accumulates in the fund provided for that purpose, with which to pay such certificates, the holders thereof shall each be paid a pro rata share of all moneys to be paid on such indebtedness; provided, further, that no part of any appropriation hereafter to be made from the state treasury, unless specifically appropriated for that purpose, shall ever be used in payment of such indebtedness or any part thereof.

§ 15, c. 158, 1890.

§ 932. State treasurer custodian of all funds. All money that may arise from the interest received and all money derived from the sale of lands heretofore or that may hereafter be appropriated for such academy, including all money that may be received from the rents of such lands, and all moneys that may be hereafter appropriated for such academy by this state, including all money raised in any other manner or donated to said academy, shall be deposited with the state treasurer to be by him kept in a separate fund which shall be known as the North Dakota academy of science fund and shall be used exclusively for the benefit of such academy.

§ 16, c. 158, 1890.

§ 933. Record and proceedings of board. A majority of the members of such board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. All proceedings of the board shall be recorded in a book to be kept for that purpose, which shall be open to inspection by any person on request.

ARTICLE 4. — AGRICULTURAL COLLEGE.

§ 1, c. 160, 1890.

§ 934. Location of. The agricultural college shall continue as now established and located at Fargo in the county of Cass.

§ 2, c. 160, 1890.
am'd.

§ 935. Management of. The government and management of such college is vested in a board of trustees to be known as the board of trustees of the agricultural college.

§ 936. Board of trustees, how appointed. Vacancies.

The board of trustees shall consist of seven members, to be appointed as follows: During each biennial session of the legislative assembly there shall be nominated by the governor and, by and with the advice and consent of the senate, appointed for the term of four years, trustees to fill vacancies occurring by the expiration of the term of office of those previously appointed. The governor shall have power to fill all vacancies in such board which occur when the legislative assembly is not in session, and the members of such board shall hold their office until their successors are appointed and qualified as provided in this article. Persons appointed to fill vacancies shall hold office only until the first Tuesday in April succeeding the next session of the legislative assembly.

3. c. 160, 1890.
1. c. 5, 1891.
am'd.

§ 937. Commission. Oath. Organization.

The governor shall cause to be issued to each trustee so appointed a commission under the great seal of the state. At the first meeting of such board the members thereof shall take and subscribe the oath of office required of other civil officers and shall then proceed to elect a president, secretary and treasurer, but the treasurer shall not be a member of the board. A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall require a bond of its treasurer in such an amount and with such sureties as it may deem proper.

§ 4, c. 160, 1890.

§ 938. Meetings, where held. Compensation of trustees.

The board shall hold its meetings at the city of Fargo at such times as it may designate, but there shall not be to exceed six regular meetings each year; provided, that the president of the board shall have power to call special meetings whenever in his judgment it becomes necessary. The members of the board shall receive as compensation for their services the sum of three dollars per day for each day employed and five cents per mile for each mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof.

§ 5, c. 160, 1890.
§ 2, c. 5, 1891.

§ 939. Duties of board. Such board shall direct the disposition of all moneys appropriated by the legislative assembly or by the congress of the United States, or that may be derived from the sale of lands donated by congress to the state for such college, or that may be donated to or come from any source to the state for said college, or experiment station for North Dakota, subject to all restrictions imposed upon such funds either by the constitution or laws of the state or by the terms of such grants from congress, and shall have supervision and charge of the construction of all buildings authorized by law for such college and station. The board shall have power to employ a president and necessary teachers, instructors and assistants to conduct such school and carry on the experiment station connected therewith and to appoint one of its members superintendent of construction of all buildings, who shall receive three dollars per day for each day actually and necessarily engaged in the discharge of his duties, not to exceed fifty days in any one year, which sum shall be paid out of the state treasury upon the vouchers of said board.

§ 6, c. 160, 1890.

§ 940. Course of instruction. The object of such college shall be to afford practical instruction in agriculture and the natural sciences connected therewith, and in the sciences which bear directly upon all industrial arts and pursuits. The course of instruction shall

§ 8, c. 160, 1890.

embrace the English language and literature, mathematics, military tactics, 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, book-keeping and especially the application of science and the mechanic arts to practical agriculture. 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 trustees as in its judgment will best secure the objects for which the college was founded.

§ 9, c. 160, 1890.

§ 941. Board of trustees to fix salaries. The board of trustees shall fix the salaries of the president, teachers, instructors and other employees and prescribe their respective duties. The board shall also fix the rate of wages to be allowed the students for labor on the farm and experiment station or in the shops or kitchen of the college. The board may remove the president or subordinate officers and supply all vacancies.

§ 10, c. 160, 1890.

§ 942. Faculty to adopt rules and regulations. 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 for the preservation of morals, decorum and health.

§ 11, c. 160, 1890.

§ 943. Duties of president. The president shall be the chief executive officer of the college and it shall be his duty to see that all rules and regulations are executed, and the subordinate officers and employees not members of the faculty shall be under his direction and supervision.

§ 12, c. 160, 1890.

§ 944. Faculty to make annual report to board. The faculty shall make an annual report to the board of trustees on or before the first Monday in November of each year, showing the condition of the school, experiment station and farm and the results of farm experiments and containing such recommendations as the welfare of the institution demands.

§ 13, c. 160, 1890.

§ 945. Annual report to governor. The board of trustees shall on or before the fifteenth day of November in each year make a report to the governor setting forth in detail the operations of the experiment station, including a statement of the receipts and expenditures, a copy of which report shall be sent by the governor to the commissioner of agriculture and to the secretary of the treasury of the United States, and the board shall also make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing a financial statement showing the condition of all funds appropriated for the use of such college and experiment station, also the moneys expended and the purposes for which the same were expended, in detail, also the condition of the institution and the results of the experiments carried on there.

§ 14, c. 160, 1890.

§ 946. Honorary degrees may be conferred. The board and the faculty shall have power to confer degrees upon all persons who shall have completed the course of study prescribed by them, and who shall have passed a satisfactory examination in the branches contained in such course, and who possess a good moral character.

§ 947. **Experiment station.** The agricultural experiment station heretofore established in connection with such college is continued and the same shall be under the direction of the board of trustees of such college, for the purpose of conducting experiments in agriculture according to the provisions of section 1 of the act of congress approved March 2, 1887, 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 2, 1862, and of the acts supplementary thereto." § 16, c. 180, 1890. am'd.

§ 948. **Legislative assent to grant by congress.** The assent of the legislative assembly is hereby given in pursuance of the requirements of section 9 of said act of congress, approved March 2, 1887, to the grant of money therein made and to the establishing of an experiment station in accordance with section 1 of said last mentioned act, and assent is hereby given to carry out the provisions of said act. § 17, c. 180, 1890.

§ 949. **Acceptance of land grant.** The grants of land accruing to this state by virtue of an act of congress donating public lands for the use and support of agricultural colleges approved February 22, 1889, is hereby accepted with all the conditions and provisions in said act contained, and said lands are hereby set apart for the use and support of the colleges herein provided for. § 18, c. 180, 1890.

§ 950. **Bond of treasurer.** The treasurer of such college shall give a bond in the sum of fifty thousand dollars with at least four sureties to be approved by the board of trustees of such college, conditioned for the faithful accounting of all moneys received by him as such treasurer. § 5, c. 7, 1891. am'd.

ARTICLE 5. — DEAF AND DUMB ASYLUM.

§ 951. **Location.** The deaf and dumb asylum as located by the constitution at Devils Lake shall continue to be the institution for the support and education of the deaf and dumb children of the state. § 1, c. 161, 1890. am'd.

§ 952. **Board of trustees, how appointed.** Such institution shall be under the supervision of a board of trustees consisting of five members; who shall be appointed by the governor by and with the advice and consent of the senate. At each biennial session of the legislative assembly the governor shall nominate and, by and with the advice and consent of the senate, appoint for the term of four years, trustees to fill vacancies occurring by the expiration of the term of office of those previously appointed, and the governor shall have power to fill all vacancies in the board which occur when the legislative assembly is not in session, and the members of such board shall hold their office for the term of four years commencing on the first Tuesday in April succeeding their appointment, and until their successors are appointed and qualified, except members appointed to fill vacancies during the recess of the legislative assembly, which members shall hold only until the first Tuesday in April succeeding the next regular session of the legislative assembly. § 2, c. 161, 1890. am'd.

§ 953. **Organization. Meetings.** Such trustees shall meet in the city of Devils Lake. They shall choose from among their number a president and secretary, who shall hold office for two years, and until their successors are appointed and qualified. Three members of the board shall constitute a quorum for the transaction of business. § 3, c. 161, 1890. am'd.

Such board shall meet annually in the month of April and as often thereafter as may be deemed necessary for the proper transaction of business, upon the call of the president or secretary.

§ 4, c. 161, 1890.
am'd.

§ 954. Oath. Duties of officers of board. Each member of the board shall before entering upon his duties take and subscribe the oath required of other civil officers, which oath shall be filed in the office of the secretary of state. The president shall preside at all meetings of the board when present and in his absence a president pro tempore may be named to perform the duties of president. The secretary shall keep a correct record of the proceedings of the board and have charge, in trust for the institution, of all papers and records of the same.

§ 5, c. 161, 1890.

§ 955. Board to direct disposition of moneys. The board shall direct the disposition of all moneys appropriated by the legislative assembly or received from any other source for the benefit of such institution.

§ 6, c. 161, 1890.
§ 2, c. 123, 1893.
am'd.

§ 956. Duties of board. Such board shall have general supervision of the institution, adopt rules for the government thereof, employ and fix the salaries of all employees, provide necessaries for the institution and perform other duties, not devolving upon the principal, necessary to render it efficient and to carry out the provisions of this article.

§ 7, c. 161, 1890.

§ 957. Indebtedness limited. The board shall not create any indebtedness against such institution exceeding the amount appropriated by the legislative assembly for the use thereof.

§ 8, c. 161, 1890.
§ 3, c. 123, 1893.

§ 958. Compensation of members of board. The members of the board shall receive as compensation for their services three dollars per day for each day employed, and five cents per mile for each mile actually and necessarily traveled in attending meetings of the board, to be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof.

§ 9, c. 161, 1890.

§ 959. Fee for nonresident children. Deaf and dumb children, not residents of this state, of suitable age and capacity, shall be entitled to an education in such school on payment to the state treasurer of the sum of one hundred and eighty dollars per annum, in advance, but such children shall not be received to the exclusion of children of this state.

§ 10, c. 161, 1890.

§ 960. Residents entitled to education free. Each deaf and dumb person, who is a resident of this state, of suitable age and capacity, shall be entitled to receive an education in such institution at the expense of the state.

§ 11, c. 161, 1890.

§ 961. Deaf to be reported to principal of school. The assessors in each county shall annually report to the county auditor the names, ages, post office address and names of parents or guardian of each deaf and dumb person between the ages of five and twenty-five years residing in his district, including all such persons as may be too deaf to acquire an education in the common schools. Such county auditor shall, on or before the first day of August in each year, send a list containing the names, ages and residences of all such persons to the principal of the school.

§ 12, c. 161, 1890.

§ 962. Accounts for clothing, how collected. When the pupils of such institution are not otherwise provided or supplied with suitable clothing, they shall be furnished therewith by the principal, who shall make out an account thereof in each case against the parent or the guardian, if the pupil is a minor, and against the pupil if he

has no parent or guardian or if he has attained the age of majority; which account shall be certified to be correct by the principal, and when so certified such account shall be presumed correct in all courts. The principal shall thereupon transmit such account by mail to the county treasurer of the county from which the pupil so supplied shall have come; and such treasurer shall proceed at once to collect the amount by suit in the name of his county, if necessary, and pay the same into the state treasury. The principal shall at the same time remit a duplicate of such account to the state auditor, who shall credit the same to the account of the school and charge it to the proper county; provided, that if it shall appear by the affidavit of three disinterested citizens of the county, not of kin to the pupil, that such pupil or his parents would be unreasonably oppressed by such suit, then such treasurer shall not commence such action, but shall credit the same to the state on his books and report the amount of such account to the board of county commissioners of his county, which board shall levy a sufficient tax to pay the same to the state and cause the same to be paid into the state treasury.

§ 963. Transportation of indigent persons, how paid.

The board of county commissioners shall order to be paid the expenses of transportation to and from such institution of any indigent deaf and dumb children entitled to admission thereto, and they shall at the time of levying other taxes, levy a tax sufficient to reimburse the county therefor. In order to avoid long delay in transporting indigent children to and from the institution, the principal may, upon correspondence with the auditor of such county, pay such transportation and forward to such county auditor an itemized statement of the expenses. The board of county commissioners shall order the county treasurer to draw his warrants for such amount in favor of the principal of the institution, who shall account for such money as provided by law.

13, c. 161, 1890.
4, c. 123, 1893.
am'd.

§ 964. Faculty. Duties of principal. The officers of the institution shall be a principal and a matron. The principal shall be a capable person, skilled in the sign language and all the methods in use in educating the deaf, and shall have knowledge of the wants and requirements of the deaf in their proper training and instruction. The principal and matron must reside at the institution. The principal shall receive a salary of not less than fifteen hundred dollars per annum. The principal shall annually make to the board of trustees a written report stating in full the true condition of the educational, the domestic and the industrial departments of the institution and his action and proceedings therein, which report shall be embraced in the report of the trustees to the governor. He shall keep and have charge of all necessary records and registers of each department and have the supervision of teachers, pupils and servants and perform such other duties as the board may require. He may recommend and with the approval of the board employ all assistants needed therein. He shall have special charge of the male pupils, out of school hours, and shall furnish them with employment about the premises or in some trade to which they are adapted when such trades have been organized and established at the institution by the trustees and provision for their maintenance made by the legislative assembly. The proceeds and products arising from the labor and employment of the pupils shall inure to the use and benefit of the institution.

§ 14, c. 161, 1890.
§ 5, c. 123, 1893.
am'd.

§ 15, c. 161, 1890.
am'd.

§ 965. Duty of matron. The matron of the school shall have control of the internal arrangement and management of the institution and of the female pupils, out of school hours. She shall instruct the female pupils in the domestic arts or in some trade to which they are adapted, under the direction of the principal.

§ 16, c. 161, 1890.

§ 966. Board to make biennial reports. The board of trustees shall on or before the fifteenth day of November preceding each regular session of the legislative assembly make a full and complete report to the governor, showing:

1. A statement of the financial condition of the institution from the date of the last report, giving in detail the amount of moneys received from all sources and the amount expended.

2. The value of real estate and buildings at the date of the last report and the cost of improvements made, if any, since such report.

3. The number of pupils in attendance, their names, ages, residences, and cause of deafness; also the number that have entered the institution, and the number of those who have left since the last report.

4. The number and cause of deaths if any, which have occurred in the institution since the last report.

5. The improvement, health and discipline of the pupils.

6. The names of the officers, teachers and servants employed.

7. All other needful information touching such matters as may be deemed of interest.

8. Such recommendations as may be deemed needful.

ARTICLE 6. — BLIND ASYLUM.

§ 1, c. 24, 1895.

§ 967. Location and government. There is hereby established and located at Bathgate in Pembina county, a blind asylum, which shall be known by the name of the North Dakota Blind Asylum. The government and management of said asylum is hereby vested in a board of trustees consisting of five members, which shall be styled the Board of Trustees of the North Dakota Blind Asylum.

§ 2, c. 24, 1895.

§ 968. Trustees, how appointed. Length of term. The members of the board shall be nominated by the governor, and, by and with the advice and consent of the senate, shall be appointed on or before the third Monday of February of each biennial session of the legislative assembly, for a period of four years from said date; provided, however, that the first board of trustees shall be appointed by the governor at once upon the taking effect of this act; and provided, further, that the terms of the first board shall be, three members for the period of four years, and two members for the period of two years, the length of the term of the respective trustees to be designated by the governor in making the appointments. Such appointments shall be made by and with the advice and consent of the senate, when the legislative assembly is in session; otherwise the trustees appointed shall qualify and hold office until their successors are appointed and qualified. The governor shall have power to fill all vacancies which may occur in said board when the legislative assembly is not in session, and the members of said board shall hold their office until their successors are appointed and qualified as provided herein.

§ 3, c. 24, 1895.

§ 969. Organization of board. Quorum. The governor shall cause to be issued to each of said trustees a commission, which

shall be under the great seal of the state. At the first meeting of said board the members thereof shall take and subscribe the oath of office required of all civil officers and shall then proceed to elect a president, secretary and treasurer, but the treasurer need not be a member of the board. A majority of the trustees shall constitute a quorum for the transaction of business. The board shall require a bond of its treasurer and fix the amount thereof.

§ 970. Meetings of board. Compensation. The board shall hold its meetings at Bathgate and fix the time of holding the same; provided, there shall not be to exceed twelve regular meetings in each year. The members of the board shall receive as compensation for their services three dollars per day for each day employed, not to exceed twenty-four days in any one year, and five cents per mile for each mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury on the vouchers of said board; provided, that until such time as the legislative assembly shall make an appropriation for the construction and maintenance of such asylum, or until there shall be derived from the interest on the proceeds of sales of or rents derived from the thirty thousand acres appropriated for this asylum, sufficient funds to construct and maintain such asylum, the sum of five thousand dollars, the trustees appointed under this act shall receive no compensation whatever, nor shall they issue their warrant upon the state treasury for any purpose whatever. §§ 4.5, c. 24, 1895.

§ 971. Proceeds from land grant. The thirty thousand acres of land donated by congress for the purpose of such blind asylum and appropriated by the constitution of this state therefor, and all moneys received from the interest and income derived from the sales of such lands or rents derived from the leasing of such lands, are hereby appropriated for the construction and maintenance of said asylum. § 6. c. 24, 1895.

§ 972. By-laws and rules of regulation. The board shall direct the disposition of all moneys appropriated by the legislative assembly or the interest on all moneys that may be derived from the sale, or the rent derived from the leasing of land donated by congress to this state and by the constitution of the state appropriated for such asylum, and shall have supervision and charge of the construction of all buildings provided for or authorized by law for said asylum. Said board shall have power to enact by-laws and rules for the regulation of all its concerns not inconsistent with the laws of this state, to see that its affairs are conducted in accordance with the requirements of law; to provide employment and instruction for the inmates; to appoint a superintendent, a steward, a matron, a teacher or teachers, and such other officers as in its judgment the wants of the institution may require, and prescribe their duties; to exercise a general supervision over the institution, its officers and inmates, fix the salaries to be paid to the officers and to order their removal, upon good cause. § 7. c. 24, 1895.

§ 973. Reports, when made. The board shall make a report to the governor on or before the last Monday in December next preceding each biennial session of the legislative assembly, containing a financial statement showing the condition of all funds appropriated for the asylum; also the money expended and the purpose for which the same was expended in detail; also showing the condition of the institution generally. § 8. c. 24, 1895.

ARTICLE 7.—INDUSTRIAL SCHOOL.

- § 1, c. 125, 1893.
am'd. **§ 974. Location of school.** The industrial school as established and located at the city of Ellendale in Dickey county, shall continue to be an industrial school and a school for manual training. Such school shall be governed by a board of trustees consisting of three members to be appointed as prescribed in the next section.
- § 2, c. 125, 1893.
am'd. **§ 975. Appointment of board. Duties. Bond.** At each biennial session of the legislative assembly, the governor shall nominate, and, by and with the advice and consent of the senate, appoint a board of trustees for such school consisting of three members, who shall take charge and control of all funds in any manner accruing to the benefit or for the use of such school. Each member of such board shall qualify by taking and subscribing the oath required of other civil officers and giving a bond in such sum and with such sureties as the governor may require. They shall hold their office for the term of two years commencing on the first Tuesday of April succeeding their appointment and until their successors are appointed and qualified.
- § 3, c. 125, 1893. **§ 976. Industrial school fund.** All funds arising from the sale, lease or use of the lands granted to such school, and the interest arising from the use or deposit of such funds, shall be kept and maintained for the purpose of creating an industrial school fund.
- § 4, c. 125, 1893. **§ 977. Fund to be kept separate.** Such fund shall be kept as a separate fund by the state treasurer, together with its increase, and shall be paid out only in the manner hereinafter provided.
- § 5, c. 125, 1893. **§ 978. Board may receive donations.** The board shall have power to receive all donations, gifts and bequests that may be offered or tendered to or for the benefit of such school, and shall on its order expend the money accumulated for the purposes herein provided for.
- § 6, c. 125, 1893. **§ 979. Donations, how disposed of.** The board shall account to the governor at least once in each year for all donations, gifts and bequests tendered and received, and all moneys coming into the hands of such board shall be immediately covered into the state treasury to the credit of the industrial school fund.
- § 7, c. 125, 1893. **§ 980. Work on building, when commenced.** Whenever a sum not less than twenty-five thousand dollars shall have accumulated for the benefit of such school, the board may, after advertising for at least six weeks in a newspaper published at the seat of government and also in the county where such institution is located, let to the lowest responsible bidder a sufficient amount of work on the building herein contemplated to exhaust such sum, and may thereafter do likewise with any sum of not less than ten thousand dollars, until further provision shall have been made by the legislative assembly.
- § 8, c. 125, 1893. **§ 981. Building, cost of.** Within two months after the appointment of the board herein provided for, it shall meet and determine the style, size and material of the building to be constructed, but in no case shall such building cost when completed a sum exceeding one hundred and fifty thousand dollars.
- § 12, c. 125, 1893.
am'd. **§ 982. Grant of site.** This article shall become the law when a site for the school herein provided for shall have been granted absolutely to the state by the citizens of Ellendale, such site to contain not less than forty acres, and the selection and approval of the same shall be made by the board of trustees.

§ 983. **Deed of site.** When the site as herein provided for shall have been selected and approved, the deed for the same shall be filed in the office of the secretary of state. § 13, c. 125, 1893.

ARTICLE 8.—STATE HOSPITAL FOR THE INSANE.

§ 984. **Location of.** The state hospital for the insane as now established and located at Jamestown in the county of Stutsman, shall continue to be the hospital for the insane of this state, and shall be known by the name of "State Hospital for the Insane." § 1, c. 68, 1895. am'd.

§ 985. **Board of trustees, appointment of. Vacancies.** Such hospital shall be governed by a board of trustees consisting of five members to be appointed by the governor as hereinafter provided, and the term of office of such trustees shall be four years, except as hereinafter provided, and shall commence on the first Tuesday of April next succeeding their appointment. The governor at each regular session of the legislative assembly shall nominate and, by and with the advice and consent of the senate, appoint the trustees of such hospital in the place of those whose terms shall thereafter first expire, and such trustees shall hold their offices until their successors are appointed and qualified. The governor shall fill all vacancies in the board by appointment to extend to the first Tuesday of April succeeding the next regular session of the legislative assembly and at such session the governor shall nominate and, by and with the advice and consent of the senate, appoint some person to fill the vacancy for the remainder of the term. Not more than two members of the board shall be appointed from the same county. §§ 2, c. 68, 1895. 1, c. 93, 1899.

§ 986. **Sessions of board. Compensation of trustees.** The sessions of the board shall be held at the hospital and shall not in any one year exceed twenty-four days in the aggregate, but the governor may, when deemed necessary, authorize additional sessions. Each trustee shall receive three dollars per day for each day necessarily employed in attendance upon sessions of the board and all necessary traveling expenses incurred therein, to be paid on the presentation of proper vouchers containing an itemized statement of the number of days' attendance and the money actually expended as above provided, duly verified by his oath and approved by the president or secretary of the board; and the state auditor shall audit such claims and draw his warrant upon the state treasurer for the amount so allowed. §§ 3, 4, c. 93, 1899. am'd.

§ 987. **Bond and oath of trustees.** Each trustee shall, before entering upon the duties of his office, execute a bond to the state in the sum of five thousand dollars with two or more sureties to be approved as provided in section 342, conditioned for the faithful and impartial performance of his duties as such trustee; and he shall take and subscribe an oath to be indorsed upon his bond, which oath shall be the same as that required of other civil officers. § 1, c. 93, 1899.

§ 988. **Object of hospital.** The object of such hospital shall be to receive and care for all insane persons residing within the state who may be committed to its care in accordance with the provisions of this article, 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. The board of trustees shall have power to discharge patients and to refuse additional applications for admis- § 3, c. 68, 1895. am'd.

sion to such hospital when in its judgment the interests of the patients demand such discharge or refusal; and in the admission and retention of patients, curables and recent cases shall have preference over cases of long standing, and violent, dangerous or otherwise troublesome cases shall have preference over those of an opposite description.

§ 4, c. 68, 1885.

§ 989. Trustees may take lands. The board of trustees may take in the name of the state and hold in trust for the hospital any lands conveyed or devised, and any money or personal property given or bequeathed to be applied for any purpose connected with such institution; but it 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 such hospital without the consent of the legislative assembly, except that it may release any mortgage or convey any real estate which may be held by it as security for any money or upon any trust, the terms of which authorize such conveyance. No trustee or officer of the 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. The board 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.

§ 6, c. 68, 1885.
am'd.

§ 990. Officers of board. The board of trustees shall elect a president and secretary from its own number, whose term of office shall be one year and until their successors are elected and qualified. The board shall keep a record of its proceedings at all meetings in a book to be kept for that purpose; and at its annual meeting next preceding the biennial session of the legislative assembly it shall make a report to the governor of the condition and wants of the hospital, which shall be accompanied with a full and accurate report of the superintendent, showing the annual cost per capita of the inmates, and the per cent of discharges and recoveries, together with a detailed account of all moneys received and paid out; five hundred copies of which report shall be printed.

§ 7, c. 68, 1885.
am'd.

§ 991. Meetings of the board. The annual meeting of the board shall be held on the first Wednesday of September. Special meetings for the appointment or removal of officers, or for the transaction of general business may be held upon the written request of the president or of any three members of the board. Three members of the board shall constitute a quorum for the transaction of business.

§ 8, c. 68, 1885.
§ 1, c. 132, 1891.
am'd.

§ 992. Powers and duties of board. The board of trustees shall have general control and management of the hospital and shall make all by-laws, rules and regulations necessary for the government of the same not inconsistent with the laws of the state. It shall appoint a superintendent, who must be a physician of acknowledged skill and ability, a graduate of a reputable medical college and a person possessing a good moral character. It shall, when the superintendent shall deem such appointment necessary, appoint one or more assistant physicians, who shall possess like skill and ability and be graduates of a reputable medical college; also a steward and matron, all of whom shall be styled the resident officers of the hospital, and who shall reside therein and be governed by the laws and by-laws of such institution. The annual salaries of the resident officers shall be as follows: Superintendent, two thousand five hun-

dred dollars; steward, twelve hundred dollars; first assistant physician, twelve hundred dollars; matron, five hundred dollars; and the salaries of other assistant physicians shall be fixed and regulated by the board of trustees according to length and quality of service, not exceeding one thousand dollars per annum for each.

§ 993. **Monthly visits by one trustee.** One or more of the trustees shall visit the hospital monthly, and the president of the board, with the superintendent, shall make monthly examinations of the accounts of the steward and certify their approval on the same page with his monthly balance. § 9, c. 68, 1885.

§ 994. **Superintendent. Bond and oath.** The superintendent of the hospital shall, before entering upon the duties of his office, give a bond to the state in the penal sum of twenty-five hundred dollars, conditioned for the faithful and impartial discharge of the duties of his office according to law, and the by-laws of such hospital, to be approved by the 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. He shall be the chief executive officer of the hospital and shall have the entire control of the medical, moral and dietetic treatment of the patients; he shall employ all employees and assistants necessarily connected with the institution below the grade designated as officers in section 992, and he may discharge any such employee at will and suspend any resident officer of the hospital, except the steward, being responsible to the board for the proper exercise of that power. § 10, c. 68, 1885. am'd.

§ 995. **Duties of steward.** The steward shall keep the accounts, pay those employed in and about the hospital, and have personal superintendence of the farm, garden and grounds, and perform such other duties as may be assigned him by the by-laws, 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 purchased 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 articles and make contracts for the furnishing of the same in bulk or in quantity as may be needed for use. § 11, c. 68, 1885.

§ 996. **New buildings.** Whenever any additional building is erected or extensions, alterations or repairs are to be made in connection with such 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 it most advantageous, the contractor in each case to give adequate security for the faithful performance of his contract; to appoint and fix the compensation of a building superintendent who shall superintend the work and perform such other duties in that respect as the board may require, and to discharge him; also to examine and certify to the correctness of his estimates and accounts for work under the contract, and of the superintendent and the employees. § 13, c. 68, 1885.

§ 997. **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 materials furnished, and only upon proper estimates thereof § 14, c. 68, 1885.

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 such appropriation is made, then no part of the sums so appropriated shall be expended or drawn from the treasury, nor shall any liability on the part of the state be created on account of such appropriation.

§ 15, c. 68, 1885.
am'd.

§ 998. Patients. All patients of the hospital who are residents of this state shall receive their board and treatment free of charge. The residents of other states or territories may be admitted to the hospital upon the payment of the first cost of such board 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 this state; and provided, further, that should any patient be unwilling to accept gratuitous board and treatment, the superintendent is authorized to receive pay therefor, and is required to account for the same in an itemized monthly statement to the board of 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 patient he shall account for the same and for the expenditure in like manner.

§ 23, c. 23, 1879.

§ 999. 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 any such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid.

§ 32, c. 23, 1879.

§ 1000. Preference given in receiving patients. If at any time it becomes 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. Cases of less than one year's duration.
2. Chronic cases 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.

§ 36, c. 23, 1879.
am'd.

§ 1001. Proceedings when patient escapes from hospital. If any patient shall escape from the hospital the superintendent shall cause immediate search to be made for such patient and if such 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 such county the commissioners shall cause him to be returned and shall issue their warrant therefor as in other cases, unless the patient shall be discharged.

§ 1002. Discharge of patients 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 of such patient in the hospital. The relatives of any patient not susceptible of cure 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, and during the interim between the meetings of the board the consent of two of the trustees shall be sufficient. § 37, c. 23, 1879.

§ 1003. Discharge of patients before cure. 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 discharge therefrom; provided, that no patient who is under charge or conviction of homicide shall be discharged without the order of the board of trustees. § 38, c. 23, 1879.

§ 1004. Discharge of patient without application. When any patient is 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 he belongs and the commissioners shall forthwith cause him to be removed and shall at once provide for his care in the county, as in other cases, unless such patient is discharged as cured. And if the commissioners of insanity of such county fail or neglect to take and remove such patient so discharged within thirty days from the date of the order discharging him and of the notice of the order so sent, such county shall be liable for and pay to the state the sum of two dollars per day for the care and keeping of such patient at the hospital during the time commencing at the expiration of thirty days after the date of such order and notice. It shall be the duty of the superintendent of the hospital to report all such delinquencies and the time of any patient so kept beyond such period of thirty days, giving the name thereof, the county where such patient belongs, the amount due from such county for such charge, to the governor, for the year ending on the thirtieth day of June each year. It shall be the duty of the state board of equalization to include and charge such amount so reported to each county so named, and the same shall be included and made a part of the tax levied against such county, in addition to the amount so levied by such board for state purposes. § 39, c. 23, 1879.
§ 1, c. 66, 1887.
am'd.

§ 1005. Attorney general to bring suit, when. Upon the report of the superintendent provided for in the preceding section, it shall be the duty of the attorney general to bring an action against the county so indebted, for the amount due the state, and any judgment obtained in such action may be enforced as other judgments against counties are enforced. § 2, c. 66, 1887.

§ 1006. Superintendent not responsible for reception of patient, when. 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 provided by law shall § 43, c. 23, 1879.

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.

§ 44, c. 23, 1879.

§ 1007. Hospital seal to be affixed. The superintendent shall affix the seal of the hospital to each notice, order of discharge, report or other paper required to be given or issued by him.

§ 46, c. 23, 1879.

§ 1008. Board to furnish blanks to commissioners of insanity. The board of trustees of the hospital shall provide the commissioners of insanity of each organized county with such blanks as may be necessary to enable them to comply with the provisions of this article, and also with a copy of the by-laws of the hospital, when printed.

ARTICLE 9. — SOLDIERS' HOME.

§ 1, c. 165, 1890.
am'd.

§ 1009. Location of. The soldiers' home as located and established at the city of Lisbon in the county of Ransom, shall continue as such at said place.

§ 2, c. 165, 1890.
§ 1, c. 121, 1893.

§ 1010. Objects of. The object of the 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, and their wives and widows.

§ 2, c. 165, 1890.
§ 1, c. 121, 1893.

§ 1011. Who may be admitted. No applicant shall be admitted to such 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 Dakota regiment or was accredited to the territory of Dakota.

§ 3, c. 165, 1890.

§ 1012. Granted lands and funds pledged. All lands which have been or may be hereafter granted by the United States or by this state for a soldiers' home are hereby set apart for the support of such home, and all the proceeds from the sales of such lands are hereby pledged as a perpetual fund for the use and benefit of such home.

§ 5, c. 165, 1890.
§ 2, c. 121, 1893.
am'd.

§ 1013. Board of trustees, how appointed. The general supervision and government of the home shall be vested in a board of five trustees to be styled "The Board of Trustees of the Soldiers' Home," each member of which shall have served in the army or navy of the United States, and who shall be appointed by the governor by and with the advice and consent of the senate, no two of whom shall be from the same county, except the county wherein the institution is located, from which at least two of the members shall be appointed. The members of the board shall hold their office for the term of two, three, four and five years respectively, except the chairman of the board who shall hold his office for one year only. The time for which each member shall hold his office shall be designated in his certificate of appointment; provided, that when not otherwise incompetent, in the opinion of the governor, the commander or chief officer of the organization known as the Grand Army of the Republic, shall be appointed as chairman of such board, and the appointment of such chairman shall be made each year immediately after his election by such organization, without the advice or consent of the senate. The compensation of the trustees shall be three dollars per day each for not exceeding twenty-four days in any one year and their necessary expenses while performing the duties of their office.

§ 1014. Oath and bond of trustees. Before entering upon the duties of his office each member of the board shall take and subscribe the oath required of other civil officers and execute a bond to the state in the sum of three thousand dollars with two or more sureties, to be approved by the governor, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for all moneys which may come into his hands under the provisions of this article, which bond and oath shall be filed in the office of the secretary of state. § 6, c. 165, 1890.

§ 1015. Meetings of board. Reports. It shall be the duty of the board to meet annually on the first Tuesday in June, and at such meeting it shall elect a secretary whose compensation shall be determined by the board and who shall hold his office for one year or until his successor is elected and qualified. The board shall have four regular meetings in each year and not to exceed two special meetings, and may adopt a seal and make rules and regulations not inconsistent with the constitution of the United States or of this state for the management and government of such home, including such rules as it shall deem necessary for the preservation of order, enforcing discipline and preserving the health of its inmates. The board shall annually make full and detailed reports of the disbursements of the home and its condition, financial and otherwise, to the governor and to each regular session of the legislative assembly. § 10, c. 165, 1890.

§ 1016. Commandant and subordinate officers. Qualifications. Such board shall have the power and it shall be its duty to appoint a commandant for said home who shall serve during the pleasure of the board and who shall be one who was honorably discharged from the military or naval service of the United States, who served in the war of the Rebellion, whose salary shall not exceed twelve hundred dollars per annum, and who shall nominate, subject to the approval of the board, all necessary subordinate officers who shall all be persons either honorably discharged from the service of the United States or widows of honorably discharged soldiers. Such subordinate officers may be removed by the commandant for inefficiency or misconduct, but in case of removal he must make a detailed statement of the cause thereof to the trustees and the board shall have the power to reinstate such persons. The compensation of the subordinate officers shall be fixed by the board. § 11, c. 165, 1890.
am'd.

§ 1017. Funds, how kept. All moneys that may arise from the interest received on all money derived from the sale of lands appropriated for such home, including all money received from the rental of such lands, and all moneys hereafter appropriated for such home by this state and all money received from other sources shall be deposited with the state treasurer, to be by him transmitted at least once in every sixty days to the institution treasurer, if he shall have qualified as provided by law, and such money when received by such institution treasurer shall be used exclusively for the benefit of such home as provided by law. § 13, c. 165, 1890.
§ 3, c. 121, 1893.

§ 1018. Majority of board to approve contracts, etc. Every contract to be performed by the board must receive the approval of a majority of the trustees in regular session, in order to be valid. All proceedings of the board shall be recorded in a book to be kept for that purpose and open to the inspection of any person on request. § 14, c. 165, 1890.

§ 1, c. 104, 1895.

§ 1019. Governor to accept grant. The governor is empowered and directed to accept for the state the conditions imposed, by an act of congress, entitled "An act to provide aid to state or territorial homes for the support of disabled soldiers and sailors in the United States, approved Aug. 27th, 1888." He is further directed to send to the president of the board of managers of the national home for disabled volunteer soldiers a copy of all laws bearing upon the establishment, regulation and maintenance of the soldiers' home at Lisbon, with all printed regulations, relating to the management of the home now in force, together with a copy of this and the next section.

§ 2, c. 104, 1895.

§ 1020. Auditor to receipt for money. The state auditor is empowered to receive and receipt for any and all money which may become due to the state by reason of said act and to turn the same into the state treasury for the use and benefit of the state soldiers' home, to be disbursed and accounted for in the same manner as other money appropriated out of the treasury for such home.

CHAPTER 11.

GENERAL PROVISIONS RELATING TO PUBLIC INSTITUTIONS.

ARTICLE 1.—FLAGS TO BE DISPLAYED.

§ 1, c. 69, 1890.

§ 1021. Flags displayed on public institutions. The flag of the United States shall be displayed upon all state institutions between the hours of nine o'clock A. M. and four o'clock P. M. of each day.

§ 2, c. 69, 1890.

§ 1022. Expenses, how paid. It is the duty of the officials in charge of the various state institutions to make the necessary arrangements for carrying out the provisions of the preceding section and the expenses necessarily incurred in so doing shall be audited and paid by the state auditor in the same manner as bills for incidental expenses are audited and paid.

ARTICLE 2.—EXPENDITURES AND TRANSFER OF FUNDS.

§ 1, c. 23, 1895.

§ 1023. Excessive expenditures prohibited. Emergency. It shall be unlawful for any board of trustees, commissioners, directors, person or persons having the control or management of public institutions of the state, or having in any manner whatsoever the responsibility of disbursing or expending any money appropriated by the state, either directly or indirectly, or in any manner whatsoever to expend or to agree or contract to expend for the use or benefit of any institution or purpose any amount in excess of the sum appropriated for such institution or purpose, nor shall any amount appropriated for any specific purpose or fund be used for or transferred to any other purpose or fund; provided, that when in the belief of any such board, person or persons, an emergency exists, and the interests of the state are jeopardized by reason of the exhaustion of the amount appropriated, or by cause for which there is no provision of law, the matter with all relative facts, shall be referred to a commis-

sion consisting of the governor, secretary of state and state auditor, who may authorize the transfer of money from one fund to another fund of the same institution or purpose, or who may in extreme cases authorize money to be drawn from the state treasury to meet the emergency.

§ 1024. **Penalty.** Any board of trustees, commissioners, directors, person or persons violating the provisions of the last section shall be conjointly and individually liable for all amounts so used or transferred and shall forfeit his or their offices. § 2, c. 23, 1895.

§ 1025. **Trustees not to be interested in contracts.** No member of any board of trustees or managers, or any officer or employee of any state, educational, charitable or correctional institution now existing in this state or which may hereafter be established by law shall be interested, directly or indirectly, in any contract, purchase or sale for or on account of, the institution with which he may be connected. § 1, c. 33, 1895.

§ 1026. **Penalty.** Any violation of the preceding section shall be sufficient cause for removal from office. § 2, c. 33, 1895.

ARTICLE 3. — INSURANCE OF PUBLIC BUILDINGS.

§ 1027. **Property to be insured. Governor to approve company.** It shall be the duty of the boards of trustees of the respective state institutions to cause to be insured in such insurance companies as may be approved by the governor, for the benefit of the state, the public buildings and contents under their control respectively, for an amount not to exceed two-thirds of their value; and for that purpose they are authorized to expend such a sum as may be necessary, and upon presenting vouchers therefor to the state auditor it shall be his duty to draw a warrant upon the state treasurer in payment of the sum so expended. § 1, c. 68, 1887.

§ 1028. **Duty of governor.** It shall be the duty of the governor to cause to be insured all other public buildings and their contents belonging to the state, for the benefit of the state, and not to exceed two-thirds of their value and for that purpose the state auditor shall draw his warrant upon the state treasurer in payment of the premiums for such insurance. § 2, c. 68, 1887.

§ 1029. **In event of loss.** In the event of a loss occurring under any policy upon any public building or the contents insured under the provisions of the last two sections, the money received from the insurance shall be used and expended by the governor or board of trustees, as the case may be, in the erection or repair of the building upon the site of the one injured or destroyed and replacing the contents, and such building shall be occupied and used for the same purposes as the one damaged or destroyed. Policies issued under the provisions of the two preceding sections shall run in the name of the state and shall be for a term of three years. § 3, c. 68, 1887.

ARTICLE 4. — LIGNITE COAL TO BE USED.

§ 1030. **Public institutions to use.** The various state institutions, county buildings and public schools of this state shall use for fuel native or lignite coal, and it shall be unlawful for any officer to purchase for use in such institutions, county buildings and public § 1, c. 44, 1891.
§ 1, c. 38, 1893.
am'd.

schools any coal other than that taken from the mines within the boundaries of this state. This section shall not be construed, however, as prohibiting the use of wood at such institutions, county buildings and public schools, when the cost thereof does not exceed that of native coal.

CHAPTER 12.

FIREMEN'S ASSOCIATION.

§ 1031. **Appropriation for.** There is annually appropriated out of any money in the state treasury, not otherwise appropriated, the sum of one thousand dollars for the use and benefit of the North Dakota Firemen's Association for the purpose of promoting the efficiency and growth of its different departments, and the holding of an annual tournament according to the rules and regulations of such association. Such money shall be paid to the treasurer of such association and by him paid out only on the order of the president and secretary of such association, for the purposes herein mentioned.

§ 1032. **Report of officers.** The president, secretary and treasurer of such association, shall, within thirty days after the termination of each tournament, make to the state auditor a full and complete report, duly verified by the secretary, of the disposition of all moneys received by such association from the state.

§ 1033. **Tournament. Payment of appropriations.** The time and place at which such tournament is to be held shall be determined at the annual state convention of such firemen's association; the name of which place with the date of tournament, shall be forwarded at least thirty days prior to the holding of such tournament, to the state auditor by the secretary of such association. Such secretary shall also furnish the state auditor with the name and address of the treasurer of such association, and it is the duty of the state auditor to pay to such treasurer, not later than the first day of June of each year, the sum so appropriated, but not, however, until such association shall file with the state auditor a good and sufficient bond in the sum of two thousand dollars, conditioned for the faithful disposition of the funds so appropriated.

CHAPTER 13.

STATE LIBRARY.

§ 1034. **Secretary of state to have custody.** The secretary of state shall have the care and custody of the state library.

§ 1035. **Secretary to purchase books. Appropriation.** There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of one thousand dollars annually, to be expended by the secretary of state under the direction of the judges of the supreme court in purchasing for the state library such volumes of the supreme court reports, digests and statutes of any state or territory, where such volumes cannot be procured by exchange,

and for the purchase of such other books and documents as may be deemed desirable for such library. Before purchasing such books the secretary of state shall advise with and consult the judges of the supreme court as to what books shall be purchased.

§ 1036. **Appropriation for care and custody.** There is hereby appropriated out of the state treasury the sum of five hundred dollars annually to be expended under the direction of the secretary of state in procuring the services of a competent person as state librarian, whose duties shall be to have the care and custody of such library. § 2, c. 166, 1890.

§ 1037. **Accounts, how paid.** Upon the presentation of verified accounts of the secretary of state for the purchase and cost of transportation of any such volumes and for the care and custody of such library, the state auditor shall draw his warrant on the state treasurer for such amount. § 3, c. 166, 1890.

CHAPTER 14.

STATISTICS.

§ 1038. **Assessors to furnish statistics.** It shall be the duty of the several county, township, city and village assessors of this state at the time of listing property for taxation each year to require each person, firm, company and corporation in his assessor district to make a statistical statement of facts relating to agriculture, horticulture, stock raising and such other subjects as may be required by the state statistician, in the manner provided for herein and specified in the instruction, given by the state statistician; and each assessor shall make such other statistical returns, not herein mentioned, as may be required by the state statistician, of and through the county auditor; and each assessor shall make a return of such statements in tabulated form to the county auditor at the time of returning the lists of property for taxation. Such statement shall be made under oath by the persons or by the managers or agents of the firms, companies or corporations, and if any such person refuses or neglects to make such statement under oath, it shall be the duty of the assessor to obtain such information to the best of his ability from neighbors or others that may be supposed to be best prepared to furnish it, which information, so obtained, the assessor shall indicate how procured and whether he has reason to believe the same to be reliable. Each assessor shall make an alphabetical list of the names of the persons refusing to make such statements, with their post office addresses, which list he shall return to the county auditor. § 1, c. 114, 1891. am'd.

§ 1039. **What statistical statement to contain.** The statistical statement mentioned in the foregoing section shall contain, among other things, answers properly classified to the following questions: What is the number of farms, the number of acres cultivated or to be cultivated to crop for the current year, together with the acreage and product, for the year immediately preceding, of wheat, oats, barley, flax, corn, rye, potatoes, cultivated and wild hay and other farm produce. The number of mules, horses, milch cows and other cattle, sheep and hogs subdivided into the breed or classes to which § 2, c. 114, 1891. am'd.

they belong. The number of pounds of wool clipped, and the dairy products for the past year. The number and kinds of trees grown in cultivated or planted forests; the number of nurseries and the acreage of each; the number and kind of fruit trees, berries and vines, and the orchard products for the preceding year. The male and female population of each county, township, city and village, and the number of blind, deaf and dumb, insane and idiotic in each assessor's district.

§ 4. c. 114, 1891.
am'd.

§ 1040. Statistics, how obtained. Each assessor shall perform the service required of him by a personal visit to each dwelling house and to each family in his township, district, city or village, and shall ascertain by inquiries made of some member of each family, if any one can be found capable of giving the information, but if not, then he shall obtain such information from the most reliable source; and he shall personally visit the farm, shops and other places in the district, respecting which information is required, as specified on the blanks furnished him by the state statistician, and he shall obtain all information from the best and most reliable sources. The county auditor shall furnish to each assessor in his county such blanks as may be necessary for taking such statements, which blanks shall be furnished by the state statistician to the county auditors, together with printed instructions explaining the duties of the assessor in collecting the statistics aforesaid; and the county auditor shall, within thirty days after such statements are returned to him, make out in duplicate a tabular statement thereof, by assessors' districts, properly verified, one copy of which shall be preserved in the office of the county auditor and the other forwarded to the state statistician. In case such statement is not received by the state statistician on or before the fifteenth day of August of any year he shall notify such county auditor in writing of such delinquency and shall cite him to the provisions of this section, and if such auditor refuses or neglects to prepare and forward such statement on or before the fifteenth day of September the state statistician shall report such fact to the attorney general, who shall at once proceed to enforce the penalties provided in section 1042.

§ 5. c. 114, 1891.
am'd.

§ 1041. Compensation. The services herein required of the several assessors shall be performed at the same time that they list property for taxation. They shall not be paid for such services separately but for the time employed in collecting such statistics and for listing property for taxation they shall be allowed and paid as for one and the same service; and they shall be allowed and paid the same per diem for the discharge of the services required herein as is now or shall hereafter be provided for listing property for taxation; provided, that an assessor shall receive no pay for services as assessor, except on presenting a certificate from the county auditor that he has fully complied with the requirements of the foregoing section; and it is the duty of the county auditor when any assessor fails to make proper and complete returns of the statistics required herein, to withhold such certificate until the work is fully and properly completed, and to return forthwith the blanks to such assessor, indicating to him the deficiencies in such statistics and what is needed by way of correction, and shall specify a reasonable time within which such assessor shall fully complete the work and return the same to the county auditor; and it shall be the duty of such assessor immediately to carry out the instructions of such auditor and return the statistics completed, within the time prescribed. In case of his failure to comply with such requirement, such assessor shall forfeit all compensation

and be subject to the penalties prescribed in the next section; and it is the duty of the county auditor to enter complaint against such assessor and the state's attorney of the county shall prosecute the same; and any judgment or penalty so recovered against any such assessor shall be a lien against all real and personal property owned by such assessor. In case any assessor fails to complete such statistics and return the same to the county auditor within the time prescribed, after they have been returned to him by the county auditor with the proper instructions for completion, such county auditor shall appoint some suitable person to collect or complete the statistics for the district, and such appointee shall perform such work as provided in the case of a regularly chosen assessor and shall be entitled to compensation at the same rate to be paid as provided for assessors. The failure of any county auditor to require the complete performance of duty by assessors as herein provided or to enter complaint against any assessor who shall fail to perform his duty as herein provided shall be deemed a misdemeanor and such auditor shall be liable to the penalties prescribed in the next section.

§ 1042. Penalty for neglect or refusal. Any assessor or county auditor who shall willfully neglect or refuse in whole or in part to perform the duties required in the foregoing sections, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than twenty nor more than one hundred dollars. § 6, c. 114, 1891. am'd.

§ 1043. County auditor to furnish statistics to state statistician. Each county auditor shall, upon request, furnish to the state statistician such information from the county records regarding the county, its financial condition, products and other statistical information as may be requested, on blanks furnished by the state statistician, and the refusal or neglect of any county auditor to furnish such information within thirty days from the receipt of such request shall be deemed a misdemeanor and shall subject such auditor to the penalties prescribed in the preceding section. § 7, c. 114, 1891. am'd.

§ 1044. Duty of state statistician. The state statistician is hereby required to carry into effect the provisions of the foregoing sections relating to the collection and compilation annually of the statistical data therein mentioned, and he shall cause the returns when received to be arranged, classified and published in the best and most convenient manner in order to exhibit the annual growth and development of each county in the state. § 8, c. 114, 1891.

§ 1045. Expenses to be paid by state. The expenses incurred in procuring and furnishing the necessary blanks, stationery and postage and compiling and publishing the statistical information herein required, shall be paid by the state treasurer on the warrant of the state auditor, which shall be issued on the presentation of the account of the state statistician duly verified, when approved by the governor. § 9, c. 114, 1891.

CHAPTER 15.

GREAT SEAL OF THE STATE.

- § 1, c. 149, 1890. **§ 1046. Great seal.** The seal prescribed in section 207 of the constitution shall be the great seal of the state, and a description in writing of the same shall be deposited and recorded in the office of the secretary of state and remain a public record.
- § 2, c. 149, 1890. **§ 1047. Dimensions of seal.** Upon every seal of a court or officer of this state required or authorized to have a seal, there shall be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used, and all such seals, except the great seal, shall be one and five-eighths of an inch in diameter.
- § 3, c. 149, 1890. **§ 1048. Temporary seal may be authorized, when.** When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal or of any device by way of seal until the same is provided as aforesaid.

CHAPTER 16.

DEPOSITORY FOR STATE TITLES.

- § 1, c. 199, 1890. **§ 1049. Deeds and title papers of state deposited, where.** All abstracts and conveyances of title to this state of any lands now owned or hereafter acquired by the state, whether such lands are held for penal, educational, charitable or other institutions or purposes, shall be by those in whose charge such conveyances now are or may come, deposited with and remain in the control of the secretary of state.

CHAPTER 17.

HIGHWAYS, BRIDGES AND FERRIES.

ARTICLE 1. — OPENING AND VACATING HIGHWAYS.

- § 1, c. 29, Pol. C.
am'd. **§ 1050. Public highways defined.** All section lines are public highways as far as practicable, and all existing highways shall continue as such until changed or vacated according to law; but no road traveled or used by one or more persons over another's land shall hereafter become a public highway by use.
- § 3, c. 29, Pol. C.
am'd. **§ 1051. Width of highways.** Public highways along section lines shall be sixty-six feet wide and shall be taken equally from each side of such lines.
- § 44, c. 29, Pol. C. **§ 1052. Highways between two owners.** Public highways laid out upon a line dividing the lands of two individuals shall be taken equally from the land of each so far as practicable.

§ 1053. Before whom proceedings brought. In the opening, vacating or changing of a highway outside of the limits of incorporated cities, villages or towns, all proceedings relating thereto, to acquire right of way and to all other matters connected therewith shall be under the charge and in the name:

1. Of the board of county commissioners, if the county is without a civil township organization, or if the road is in territory not organized into a civil township.

2. Of the board of township supervisors of organized townships.

3. Of the boards of county commissioners of each county in case the road is between or in two or more counties.

4. Of the board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.

5. Of the board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township.

§ 1054. Petition for vacating or changing. Any ten persons owning lands in the vicinity of the highway proposed to be opened, vacated or changed may petition in writing the board having jurisdiction as provided by the provisions of the last section to vacate or change a highway or to lay out a new highway. When the petition is for the vacation or change of a highway or the opening of a new highway upon the dividing line, or in two or more counties or townships, the same course must be pursued as in other cases, except that a copy of the petition must be presented to the board of each county or township which must appoint viewers to act jointly and report to their respective boards the action of such viewers.

§ 1055. Contents of. The petition shall set forth and describe particularly the highway to be vacated, changed or opened, and if the same is changed or opened, the beginning, course and termination of the highway proposed to be changed or opened, together with the names of the owners so far as ascertainable, of the lands through which the same passes, whether such of the owners as can be found consent thereto, and if not, the probable cost of the right of way where such consent is not had, the necessity for and the advantages of the proposed road.

§ 1056. Appointment of viewers. Upon filing such petition, the board with which the same is filed, must appoint three viewers to view any proposed change of an old or any new road proposed to be opened and submit to the board an estimate of the cost of the change or opening, including the purchase of the right of way and their views of the necessity thereof.

§ 1057. Qualifications, oath and duties of viewers. The viewers must be disinterested citizens of the county or township, as the case may be, but not petitioners; they must swear to discharge their duties faithfully and must view and lay out the proposed change or new highway over the most practicable route, notify each resident owner or agent of the land over which it passes of the proposed route, ascertain whether the resident owners consent thereto, and the amount, if any, that they claim or demand for the right of way over the same, estimate the actual damage to any land over which it passes, or the cost of bridges or grading necessary, the necessity for and public con-

venience to be subserved by the highway and whether the opening thereof or change therein proposed should be made.

§ 1058. Report of viewers. When the view of the proposed change or new highway is completed, the viewers must report to the board by which they were appointed:

1. The course, termini, length and probable cost of the proposed highway.

2. Their estimate of the damages to the owners of any land over which it is proposed to run the highway.

3. The names of the land owners who consent to give the right of way, and their written consent thereto.

4. The names of the land owners who do not consent and the amount of damages claimed by each, but when there are nonresident land owners and no agent upon the land, upon whom notice can be served, such nonresident land owners must be considered as nonconsenting unless their written consent is obtained.

5. Such other facts bearing upon the subject as it may be important for the board to know.

6. They may also, in their discretion, or by order of the board, report upon the feasibility and cost of any other route than the one petitioned for, which would subserve the same purpose.

§ 1059. Compensation of viewers. The viewers must each be paid not to exceed two dollars per day for their services, out of the road fund of the district through which the road passes.

§ 1060. Hearing. Notice of Service. The board, at the next meeting after the filing of the report, or at the time when the report is filed, if then in session, must fix a day for hearing the same and notify the owners of the land not consenting to give the right of way, of the hearing, by written notice to be served on them personally, or on the occupant or agent of the owner; or if neither the owner, agent of the owner or occupant, can be so notified by reason of nonresidence or other cause, by posting notices, one at a conspicuous place on the land or left at the owner's, agent's or occupant's residence, and one at the court house, ten days prior to the date fixed for the hearing.

§ 1061. Board to hear proof and award damages. The board shall, on the day fixed for the hearing, or on the day to which it may be postponed or adjourned, hear the evidence and proof from all the parties interested for and against the proposed change or new road, ascertain and by order declare the amount of damages awarded to each nonconsenting land owner and declare the report of the viewers to be approved or rejected.

§ 1062. Order after hearing. If the board approves the report and there are no nonconsenting land owners the highway must by order be declared a public highway, and the road supervisor ordered to open the same to the public, and, if the board orders it the county surveyor shall survey and plat the same and file his field notes with the clerk of the board.

§ 1063. Damages set apart for owner. The board upon making an order establishing the location or change of any highway must order the amount of damages sustained by each person owning or claiming lands or any improvements thereon and affected thereby, as finally fixed and assessed by it to be set apart in the treasury out of the proper fund to be paid to the proper owner or claimant, if

known, and to be kept for the owner or claimant if unknown, and to be paid to him upon the order of the board upon his showing or establishing his right or title to such lands or improvements.

§ 1064. **When money returned.** Any money set apart as herein provided for must be returned to the fund from which it was set apart if not paid to or accepted by the proper owner or claimant. If the awards are all accepted, the road must be declared a public highway and be opened as above provided.

§ 1065. **Damages, how determined.** The damages must be determined by ascertaining the benefits and damages accruing to any person by reason of the changing or the laying out of such road, and the sum estimated as benefits must be deducted from the sum estimated as damages in computing the amount of damages to be awarded.

§ 1066. **Procedure when award refused.** If any award of damages is not accepted within thirty days from the date of the award it shall be deemed rejected by the land owners. The board must, if any award for damages is rejected, by order, direct proceedings to procure the right of way to be instituted by the state's attorney of the county under and as provided in the chapter on eminent domain in the code of civil procedure, against all nonaccepting land owners, and when thereunder the right of way is procured, the road must be declared a public highway, and opened as hereinbefore provided.

§ 1067. **From what fund awards paid.** All awards by agreement, ascertainment by the board or by the court, and all expenses of viewing, surveying, laying out or changing any road must be paid out of the road fund upon the order of the board.

§ 1068. **Record of viewers' report.** If the highway is opened or changed, the final report of the viewers, including the plat, field notes and report of the surveyor must be recorded in the office of the county auditor in a book kept for that purpose.

§ 1069. **Not ordered through growing crops.** No highway must be ordered opened through fields of growing crops or along a line where crops would thereby be exposed to stock until the owner thereof has sufficient time to harvest and care for such crops.

§ 1070. **Notice to road supervisor.** When any highway is to be changed or laid out, the county auditor or the clerk of the board, as the case may be, must notify the road supervisor or overseer of highways, as the case may be, of the proper district and furnish him with a certified copy of the order of the board.

§ 1071. **Record of judgment or conveyance.** In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing, conveying the right of way and incidents thereto executed and acknowledged by the party making it, or a certified copy of the judgment of the court condemning the same, in which the land so conveyed or condemned must be particularly described, must be made, and filed and recorded in the office of the register of deeds.

§ 1072. **Repair of highways across railroads, etc.** Whenever highways are laid out across railroads, canals or ditches on public lands, the owners must at their own expense so repair their roads, canals or ditches that the public highway may cross the same without damage or delay, and when the right of way for a public

highway is obtained through the judgment of any court, over any railroad, canal or ditch, no damages must be awarded for the simple right to cross the same.

§ 1073. Removal of fences. Notice to owner. When the change of an old or the opening of a new road makes it necessary to remove fences on land donated, purchased, or condemned by order of the court for road or highway purposes, notice to remove the fences must be given by the road supervisor to the owner, occupant or agent, or by posting the same on the fences; and if the same is not removed within ten days thereafter or the removal commenced and pursued with due diligence, the road supervisor may cause it to be removed at the expense of the owner and recover of him the cost of such removal and the fence material may be sold to satisfy the judgment.

§ 1074. Laid out on section lines. Highways must be laid out and opened when practicable upon subdivision or section lines.

§ 1075. Changing highway to section lines. Upon a petition for that purpose by a majority of the owners of the lands bordering upon or through which any highway passes, when it can be done without material damage, the board may change such highway to subdivision or section lines, and lay out and open the same thereon.

ARTICLE 2. — GENERAL PROVISIONS.

§ 32, c. 29, Pol.C. **§ 1076. Highways on county or township lines.** Public highways established on county or township lines shall be opened and repaired by the supervisors of the proper road district on each side thereof, and by the joint labor of the persons in each of such districts in each county or township.

§ 36, c. 29, Pol.C. **§ 1077. Settlers have same rights as freeholders.** In all applications for the location, change or vacation of any public highway, actual settlers upon any public land shall have and possess all the rights in this chapter granted to owners.

§ 42, c. 29, Pol.C. **§ 1078. Public Lands. Damages.** When any person shall acquire the title to government land 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 the receipt of his patent therefor assert his claim for damages in the manner hereinbefore provided in case of locating highways, and such roads shall remain and be public highways, but his damages, if any, shall be paid, and in case of a failure to assert his claim for damages within the time aforesaid, he shall thereafter be barred from asserting such claim.

§ 43, c. 29, Pol.C. **§ 1079. Occupying claimants.** All public lands in this state, settled upon and occupied, shall be subject to all the provisions of this chapter so far as the rights and liabilities of such settlers are concerned.

§ 47, c. 29, Pol.C.
§ 1, c. 132, 1889. **§ 1080. Hedge protection.** Any person cultivating a hedge or trees upon his lands adjoining a public highway and desiring to fence the same, may place such fence seven feet over and upon such highway, provided it does not obstruct the public travel.

§ 1, c. 69, 1893. **§ 1081. County road fund.** In each county of this state, having a population of five thousand or more, according to the latest United States or state census, there may be levied and collected annually, as other county taxes are levied and collected, a property tax of not less than one mill on each dollar of the assessed valuation of all taxable

property in the county, except in incorporated cities and villages, which, when collected, shall be kept as a distinct fund, to be known as the county road fund, and expended in the improvement of highways, under the direction of the board of county commissioners, as herein provided. Such tax shall be in addition to all other taxes for highway purposes otherwise prescribed by law.

§ 1082. Fund, how expended. Such fund shall be expended only in grading, ditching and surfacing, in proper form and condition for public travel, such highways or parts of highways, howsoever established, as constitute the principal thoroughfares of the county communicating with shipping points and market places resorted to by inhabitants of the county, for which the means otherwise provided are not, in the opinion of the county commissioners, sufficient, and then only upon petition of persons owning taxable property and residing in the vicinity of the highways in each case upon which such improvement is asked, to the number of at least one hundred. § 2, c. 69, 1893.

§ 1083. Petitions for improvements. Survey. Such petition shall be presented at the regular meeting of the board of county commissioners, and thereupon the board shall direct such investigation as may be necessary to inform it as to the utility and probable cost of the proposed improvement, and may for that purpose order a preliminary survey, and at its next succeeding July meeting, it shall determine what highways or parts of highways designated in such petition shall be so improved, and estimate the probable amount of money that will be required to complete such improvement, and how much can be reasonably provided for, and for the completion of similar improvements previously in part made by the tax levy for the current year, and shall levy such tax accordingly. § 3, c. 69, 1893.

§ 1084. Board to advertise for bids for work. At its regular April session in each year, the board of county commissioners shall determine what amount of such funds is or will be available for expenditure during the ensuing season, in improvements previously ordered, and shall apportion such available funds, as nearly as may be to the several highways upon which such improvements have been ordered, but no part thereof shall be set apart for the benefit of any highway upon which the work of improvement has not been commenced, until sufficient provision shall have been made for the completion of the work upon highways whenever it has been in part performed. It shall thereupon advertise in an issue of each week of some newspaper of the county until the last Saturday in such month for proposals to do all work contemplated during the ensuing season for which such appropriation had been made, and at its special meeting on the last Saturday of such month, it shall let the same by contract to the lowest responsible bidder, whom it shall deem competent, requiring him to give such bond as it shall deem sufficient, to secure the fulfillment of his part of such contract. § 4, c. 69, 1893.

§ 1085. Payments, how made. The board of county commissioners shall in case of each improvement ordered by it, designate the place of beginning and the direction in which the work shall proceed and require the same to be completed mile by mile or in parts of miles continuously, as so ordered, and no payment shall be made except for work so completed. It may also require the supervision of the work by the county surveyor, so far as deemed necessary, and shall require him to compute and estimate the amount of completed work and certify the same to the county auditor at the end of each § 5, c. 69, 1893.

month, and all the work so contracted for shall be completed prior to the first day of November next following. The provisions of this section and the orders and directions of the board made in pursuance thereof shall constitute a part of the provisions and conditions of every such contract, whether expressed therein or not.

§ 6, c. 69, 1893.

§ 1086. County auditor to issue warrants. Upon the filing of the surveyor's certificate as hereinbefore provided, the county auditor shall issue warrants accordingly on the county treasurer in favor of the contractor, payable out of the county road fund appropriated thereto, and the same shall be paid by the treasurer.

§ 7, c. 69, 1893.

§ 1087. Compensation of surveyor. The county surveyor shall receive for his services rendered as aforesaid the same compensation as in other cases, to be paid by the county out of such road fund, upon accounts duly verified and allowed by the board of county commissioners.

ARTICLE 3. — BRIDGES.

§ 1, c. 38, 1890.
am'd.

§ 1088. Petition. Bids. 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 such township, when the cost of such bridge shall exceed the sum of one hundred dollars, it shall be the duty of the board of county commissioners to view and investigate the necessity of such proposed bridge; and if such county board approves its location and building, it shall proceed to advertise in the official paper of the county for a period of thirty days, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge, to be submitted to them at their next regular or special meeting, at which meeting of the board it shall proceed to examine all proposals or bids for the building of such bridge, and shall award the contract to the lowest responsible bidder, requiring such bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of such bid or contract; which bond shall be approved by the board of county commissioners and filed in the office of the county auditor.

§ 2, c. 38, 1890.
am'd.

§ 1089. Expense, how paid. The expense of constructing such bridge shall be paid out of the county bridge fund, if such bridge is accepted and approved by the board.

§ 3, c. 38, 1890.
1, c. 42, 1895.

§ 1090. Supervision and repairs of bridge. Any bridge built under the provisions of section 1088 shall be under the supervision of the township board and all repairs not exceeding fifty dollars shall be borne by the township where such bridge is located, and in excess of that sum by the county; provided, that when the cost of repairing such bridge exceeds fifty dollars, it shall be under the supervision of the county commissioners; and that the cost of all such repairs shall be estimated by the county commissioners.

§ 48, c. 29, Pol.C.

§ 1091. Bridges part of highway. Bridges erected or maintained by the public constitute a part of the public highway.

§ 1, c. 18, 1887.

§ 1092. Bridges across navigable rivers, petition for. Whenever one-third of the resident taxpayers of any county as appears by the last preceding assessment roll of such county, shall petition the board of county commissioners of such county, praying for an

appropriation to build a bridge across any navigable river on the line of any such 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 such structure, and the time when it will be completed, such petition to be duly verified by the affidavits of at least fifteen of the petitioners therein named, it shall be the duty of the board of county commissioners to publish a notice in the official paper of the county, once each week for three consecutive weeks, briefly stating the object of such petition and that the same will be heard and considered at the next regular meeting of such board. At the time appointed for the hearing of such petition the board of county commissioners shall investigate the need for such bridge, and if they find the same to be necessary shall, by resolution duly entered upon the minutes of the 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 upon condition that a sufficient bond be given, conditioned that the remaining one-half or more, as the case may be, of the cost of such bridge will be paid; provided, further, that the consent of the general government to span such river shall first have been obtained.

§ 1093. County aid, conditional. If the remaining one-half of the cost of such 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 agency, the board of county commissioners shall appoint a committee from its own number, of 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, which approval shall be in writing and duly reported to such board and recorded in the minutes thereof, the board shall thereupon direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due him from such county. § 2, c. 18, 1887.

§ 1094. May vote bonds. When 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 cent per annum and not to run longer than twenty years after the 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 prescribed in the constitution is not thereby exceeded. In case the limit of indebtedness 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. § 3, c. 18, 1887. am'd.

§ 1095. Cost of bridge limited. Not more than one wagon bridge across a navigable river in each county shall be built under § 4, c. 18, 1887.

this article, and the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars.

ARTICLE 4.—ROAD SUPERVISORS.

§ 63, c.29, Pol.C. **§ 1096. Road districts. Appointment of supervisors.** At the annual meeting of the board of county commissioners in January of each year, or as soon thereafter as practicable, it shall be the duty of such board in each organized county to apportion the county into one or more road districts when such county is not formed into townships, and shall appoint for each district a road supervisor, who shall hold his office until the first day of January succeeding his appointment, and shall take an oath faithfully to discharge his duties as such road supervisor.

§ 65, c.29, Pol.C. **§ 1097. Duties of road supervisors.** 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 his 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 perform labor on the road at the same time and in the manner that those originally enrolled are liable, but any person who has performed labor that year in any road district and has a certificate thereof, shall be credited with the labor so performed, in the same manner as though it had been performed in the district in which he resides.

§ 66, c.29, Pol.C. **§ 1098. Road poll tax.** Each 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 highway within his road district at the time and place directed by the road supervisor.

§ 1, c. 124, 1881. **§ 1099. Notice to be given to persons.** 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 districts, and such notice shall specify the time when and place where they are to appear for that purpose.

§ 1, c. 124, 1881. **§ 1100. Penalty for neglect to pay tax.** Each 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 in section 1098, and who shall refuse or neglect without good cause to appear as above provided, shall, for each day's refusal pay the sum of one dollar.

§ 1, c. 124, 1881. **§ 1101. Supervisor to make complaint.** Each road supervisor may, within six days after any person shall become liable for the payment of any sum under the provisions of the foregoing section, unless a satisfactory excuse is rendered to him by the person so liable, make complaint in writing on oath to some justice of the peace in 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 as plaintiff, and the person liable for such tax as defendant, and no fees of officers nor court expenses or costs shall be paid or charged in enforcing the provisions of this chapter except that the same may be charged and collected from the defendant.

§ 1102. **Duty of justice on complaint.** The justice of the peace to whom such complaint is made shall forthwith issue a summons directed to the defendant in the form provided in the justice's code which summons shall be for relief and shall be made returnable in not less than two nor more than six days and it shall be the duty of any sheriff or constable to whom it is delivered forthwith to serve the same. § 1, c. 124, 1881.

§ 1103. **Proceedings 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 is shown to the contrary, the justice shall render a judgment in favor of the state against such person for the sum for which such person shall have become liable to pay on account of such default, neglect or delinquency, and for the delinquent tax, with the costs of the prosecution, and shall forthwith issue an execution in the usual form, directed to the sheriff or any constable of the county, returnable at the time prescribed therein commanding him to levy the amount of such judgment, including the costs, out of the goods and chattels of such defendant, and nothing shall be exempt from such execution except the absolute exemptions. § 1, c. 124, 1881.

§ 1104. **Execution.** The officer to whom such execution is 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 less the costs thereof to the supervisor who entered the complaint, to be by him expended in improving the roads and bridges in his district, and the costs thereof shall be paid to the persons entitled thereto. § 1, c. 124, 1881.

§ 1105. **Supervisors shall not excuse payment.** The acceptance by a supervisor of an excuse for such a refusal or neglect shall in no case exempt the person excused from paying for or working the tax for which he shall have become liable during the year. § 1, c. 124, 1881.

§ 1106. **Road tax worked, when.** Any road tax levied by the board of 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. § 68, c. 29, Pol.C.

§ 1107. **Work certified for tax.** The road supervisor must obtain a list of the road tax assessed against each individual; and a certificate by the supervisor for the amount worked out must be taken by the county treasurer in payment to that amount of such tax. § 69, c. 29, Pol.C.

§ 1108. **Board to expend tax, how.** The board of county commissioners must order the expenditure of all road taxes 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 it may deem most expedient for the public interests, and for this purpose shall order the payment of such sum by the treasurer to the persons 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. § 70, c. 29, Pol.C.

§ 1109. **Tax levy to pay road supervisor.** When the road tax in any road district has been worked out as provided in section 1006, and there are no funds available for paying the road supervisors, the county commissioners may levy a tax, not exceeding one mill on § 1, c. 125, 1889.

the dollar, upon the taxable property of the road district in which such deficiency occurs, for such purpose, to be paid in cash to the county treasurer as other taxes are collected and paid.

§ 71, c.29, Pol.C.

§ 1110. Obstructions in highway. It shall be the duty of each road supervisor having personal knowledge of or on being notified in writing of any obstruction in the highway, or public street in his district, immediately to remove or cause to be removed any such obstruction.

§ 72, c.29, Pol.C.

§ 1111. Penalty for obstructing highway. If any person shall willfully, carelessly or negligently obstruct or injure any public highway, public street or bridge, it shall be the duty of the road supervisor of the district in which such obstruction is placed or injury done to enter complaint against the person 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 county treasurer.

§ 73, c.29, Pol.C.

§ 1112. Report of road supervisors. On or before the first Monday of January in each year, the road supervisors appointed by the board of county commissioners shall each make a report to the board of his doings as such during the preceding year, the amount of labor performed, the number of days' labor necessarily performed by him in the discharge of his duties, and the county commissioners shall thereupon cause a warrant to be drawn on the county treasurer in favor of such supervisor for such services at one dollar and a half per day, payable from the road fund belonging to such district.

§ 74, c.29, Pol.C.

§ 1113. Penalty for refusal to serve as road supervisor. Each person elected or appointed road supervisor who shall fail, refuse or neglect to qualify as such for thirty days after having been duly notified of his election or appointment, 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 forfeiture when collected shall be paid into the road fund of the district in which he resides.

ARTICLE 5.—ROAD DUTIES OF TOWNSHIP SUPERVISORS.

§ 4, sub-c. 2, c.
112, 1883.

§ 1114. Supervisors have care of roads. The supervisors in the several townships 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 townships, regulate roads already laid out and alter such of them as they deem proper, as hereinafter provided; divide the respective townships into as many road districts as they deem convenient, by an order in writing under their hands, to be filed with the township clerk and by him entered in the township 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 township meeting. They shall assign to each of the road districts such of the inhabitants liable to work on highways as they think proper, having regard to proximity of residents, and require the overseers of highways as often as they deem necessary to warn all persons liable to work on roads, to perform work thereon, with such tools, carriages, cattle or teams, as the overseers or either of them shall direct.

§ 5, sub-c. 2, c.
112, 1883.
am'd.

§ 1115. Report of labor performed on roads. The supervisors in each township shall render to the annual township meeting an account in writing, stating the labor assessed and performed in

such township, the sums received by them for fines and commutations, 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 excess of the expense of making such improvements over the road and poll tax for that year; also a statement in writing of all expenses and damages in consequence of laying out, altering or discontinuing roads.

ARTICLE 6. — DUTIES OF OVERSEERS OF HIGHWAYS.

§ 1116. **Duties of overseers of highways.** The overseers of highways in each township 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 deem proper, collect all fines and commutation money, execute all lawful orders of the supervisors, and deliver to the township clerk within sixteen days after his election or appointment, a list subscribed by such overseer, of the names of all the inhabitants of his road district who are liable to work on the highways. § 6, sub-c. 2, c. 112, 1883.

§ 1117. **When overseer shall be 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 township shall in writing 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 township meetings. § 7, sub-c. 2, c. 112, 1883.

§ 1118. **Notice of appointment.** The supervisors making the appointment shall cause the same to be forthwith filed in the office of the township clerk, who shall give notice to the person so appointed as in other cases. § 8, sub-c. 2, c. 112, 1883.

§ 1119. **Penalty for neglect to perform duties.** Every overseer of highways who refuses or neglects to perform any of the duties prescribed in this article, or which may be lawfully required of him by the supervisors of his township, 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 township, and when recovered, to be applied by him in making and improving the roads and highways therein. § 9, sub-c. 2, c. 112, 1883.

ARTICLE 7. — HIGHWAY LABOR AND ROAD TAX.

§ 1120. **Meetings of supervisors.** The supervisors of each township shall meet at the township clerk's office on the last Tuesday of March each year and afterwards at such other times and places as they deem proper. § 10, sub-c. 2, c. 112, 1883.
§ 4, c. 155, 1887.

§ 1121. **Make estimate of labor.** The township 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 township the next ensuing year. § 11, sub-c. 2, c. 112, 1883.

§ 1122. **Who liable to labor.** Each male inhabitant above twenty-one years and under fifty years of age, excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed one day in each year. Supervisors shall levy a road tax on all real estate and personal property liable to taxation in the township to any amount they may deem necessary not exceeding one dollar on each § 12, sub-c. 2, c. 112, 1883.
§ 1, c. 128, 1885.

one hundred dollars of valuation as shown on the assessment roll of the preceding year. They shall prepare a list in which they shall write in separate columns:

1. The name of each person named in the list furnished by the overseers.
2. The number of days assessed to each person for highway labor.
3. A description of each tract of real property, in the name of the owner if known.
4. The valuation thereof as shown by the assessment roll of the previous year.
5. The amount of road tax assessed thereon.

The list so prepared shall be signed by the supervisors and deposited with the township clerk to be filed in his office.

§ 13, sub-c. 2, c.
112, 1883.

§ 1123. **Highway tax list.** The supervisors shall also place on the land road list the names of all persons against whom a 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 a land road tax assessed on real estate.

§ 14, sub-c. 2, c.
112, 1883.
am'd.

§ 1124. **Copy of list to overseers of highways.** The supervisors shall direct the township clerk to make a certified copy of each list, after which the township 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 of each person against whom a poll tax has been assessed, the other the land and personal property road tax.

§ 15, sub-c. 2, c.
112, 1883.

§ 1125. **Overseer to add certain names to the list.** The overseers of highways shall add the names of persons omitted from 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.

§ 16, sub-c. 2, c.
112, 1883.
§ 1, c. 42, 1890.

§ 1126. **Three days' notice to all persons assessed.** 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 place when and where they are to appear for that purpose, and with what implements; but no person who is a resident of the township 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. If any person shall have done any road work under the direction of the road overseer, such person shall be entitled on demand to a receipt from such overseer, which receipt shall state the value of such labor and the name of the person, when the assessment is against personal property, and the description of the land when the assessment is against real property. Such receipt shall be received by the county treasurer or road overseer in payment of any road or bridge tax levied and assessed in that or any succeeding year in such township against such person or land. If from any cause the amount stated in such receipt shall exceed the amount of the tax then due, the county treasurer or the road overseer shall accept and retain

such receipt, and shall give to the owner of such receipt another receipt for the amount of the excess of the original receipt over and above said tax. Such receipt shall be received in payment of taxes to the amount stated therein, in the same manner as the original receipt.

§ 1127. **Obstructions to be removed by overseers.** Road overseers have power and it is 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 the road tax assessed against him for that year, the road overseer shall give a receipt stating the value of such labor, and such receipt shall be received in payment of any road tax due from any person to such 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 the township, and upon conviction shall be liable to a fine of not less than five nor more than fifty dollars.

§ 17, sub-c. 2, c.
112, 1883.
am'd.

§ 1128. **Commutation of road labor.** Each 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 in their list the word "paid" opposite the name or tract of land on which the same is paid.

§ 18, sub-c. 2, c.
112, 1883.

§ 1129. **Payment of commutation money.** Each 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.

§ 19, sub-c. 2, c.
112, 1883.

§ 1130. **Power of overseer to require team or cart.** Each 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.

§ 20, sub-c. 2, c.
112, 1883.

§ 1131. **Person assessed may procure substitute.** Each 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 work eight hours in each day, under a penalty of fifteen cents for each hour such person or substitute is in default, to be imposed as a fine on the person assessed.

§ 21, sub-c. 2, c.
112, 1883.
§ 2, c. 128, 1885.

§ 1132. **Fine for neglect to appear.** Each person so assessed and duly notified, who does not commute or who refuses and neglects to appear as above provided, shall be fined for each 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:

§ 22, sub-c. 2, c.
112, 1883.

1. For wholly omitting to comply with such requisition, four dollars for each day.

2. For omitting to furnish a cart, wagon, or plow, one dollar for each day.

3. For omitting to furnish a pair of horses or oxen, one dollar and fifty cents each day.

4. For omitting to furnish a man to manage the team, one dollar and fifty cents for each day.

§ 23, sub-c. 2, c.
112, 1883.

§ 1133. When overseer shall make complaint. Each 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 article, 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 township or of an adjoining township.

§ 24, sub-c. 2, c.
112, 1883.

§ 1134. Duty of justice on complaint. The justice to whom such complaint is made shall forthwith issue a summons directed to the sheriff or any constable of the county, requiring him to summon such delinquent to appear at the time and place 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.

§ 25, sub-c. 2, c.
112, 1883.

§ 1135. Fine and collection thereof. 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 an execution under his hand directed to such sheriff or constable, commanding him to levy such fine and the costs out of the goods and chattels of the delinquent, and no property shall be exempt therefrom.

§ 26, sub-c. 2, c.
112, 1883.

§ 1136. Fine disposed of, how. The officer to whom such execution 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 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. The costs when collected shall be paid to the persons entitled thereto.

§ 27, sub-c. 2, c.
112, 1883.

§ 1137. Overseer cannot excuse person. The acceptance by an overseer of any excuse for refusal or neglect shall in no case exempt the person excused from commuting for or working the whole number of days for which he is assessed during the year.

§ 28, sub-c. 2, c.
112, 1883.

§ 1138. Compensation of overseers. Each overseer of highways is entitled to two dollars per day, to be paid out of the fines and commutation money for each day he is necessarily employed in the execution of his duties as overseer. 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.

§ 29, sub-c. 2, c.
112, 1883.
§ 1, c. 153, 1887.

§ 1139. Overseer to return tax list. Each overseer of highways shall deliver to the township clerk of his township 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 such list opposite which the word "paid" is not written, are due and unpaid according to the best of his knowledge and belief.

§ 30, sub-c. 2, c.
112, 1883.

§ 1140. Refusal or neglect 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 each offense, forfeit the sum of

five dollars, and also the amount of tax remaining unpaid, to be recovered by the supervisors of such township and applied by them in improving roads and bridges in such township.

§ 1141. **Township clerk to make out delinquent list.** The township clerk of each township shall receive the lists returned by the overseer of highways pursuant to section 1139 and keep the same on file in his office, and shall make out and deliver to the county auditor of the county, on or before the first day in 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 the duty of the county auditor to extend such unpaid taxes upon the tax lists for the current year, to be collected in the same manner as other taxes. Such road tax, when collected, shall be paid to the township treasurer of the proper township upon the certificate of the county auditor, and shall be expended by the supervisors in the construction or repair of roads and bridges, to be paid by the township treasurer upon the order of the supervisors.

§ 31, sub-c. 2, c.
112, 1883.
§ 2, c. 158, 1887.

§ 1142. **Work done prior to August first.** It shall be the duty of each 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.

§ 32, sub-c. 2, c.
112, 1883.

§ 1143. **Report of supervisors.** Each overseer of highways shall on the second Tuesday next preceding the time of holding the annual township meeting in his township within the year for which he is elected or appointed, render to one of the supervisors of the township an account in writing containing:

§ 33, sub-c. 2, c.
112, 1883.

1. The names of all persons assessed to work on the highways in his district.

2. The names of all those who have actually worked on the highways, 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.

§ 1144. **Overseer to pay over money.** Every such overseer shall then and there pay to the supervisors all unexpended moneys remaining in his hands, to be applied by the supervisors on the roads and bridges in the township.

§ 34, sub-c. 2, c.
112, 1883.

§ 1145. **Penalty for refusal to render account.** If any overseer refuses or neglects to render such account or if, after rendering 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 township and applied to the improvement of the roads and bridges in such township.

§ 35, sub-c. 2, c.
112, 1883.

ARTICLE 8. — ROADS IN CITIES.

§ 53, sub-c. 2, c.
112, 1883.

§ 1146. Powers of city authorities. The same powers and duties in and by this chapter conferred and imposed upon township supervisors, are also conferred and imposed upon the city councils of the several cities throughout this state, and in addition thereto 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 in such district, and the overseers of roads, city clerks or auditors, justices of the peace and constables of the several cities of the 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 township overseers, clerks, justices of the peace and 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 reservations made by law in regard to incorporated cities.

ARTICLE 9. — OBSTRUCTING HIGHWAYS.

§ 74, sub-c. 2, c.
112, 1883.

§ 1147. Penalty for obstructing highway. 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 one rod on either side of the center line of such highway, shall be subject to a fine of not less than five nor more than twenty-five dollars, together with the costs of prosecution, and on failure to pay such fine and costs, he 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 the duty of the board of supervisors of the several townships in this state to make complaint and to prosecute or cause to be prosecuted all persons violating the provisions of this section.

ARTICLE 10. — WATERING PLACES ON HIGHWAYS.

§ 84, sub-c. 2, c.
112, 1883.

§ 1148. Watering troughs. Bounty for. Any person in any city, village or township in this state who shall construct and maintain a watering trough beside the highway, which shall be above the ground and made easily accessible for horses, shall be allowed by the city, village or township, five dollars out of his highway tax for each year during which he shall maintain the same.

§ 85, sub-c. 2, c.
112, 1883.

§ 1149. Well or spring. Bounty for. Any person in any city, village or township who shall construct and maintain a good well or spring beside the highway, 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, village or township, three dollars out of his highway tax for each year during which he shall furnish the same.

§ 86, sub-c. 2, c.
112, 1883.

§ 1150. Proceedings to furnish watering places. Any person upon any highway or road in any district or ward desiring to furnish such watering trough, well or spring, shall make application to the aldermen of the city or supervisors of the township, who shall decide where such trough, well or spring shall be located, and the number of persons who may receive the benefits of the last two sections.

ARTICLE 11. — DITCHES FOR DRAINING HIGHWAYS.

§ 1151. **Proceedings for.** Whenever any overseer of highways or road supervisor shall file with the board of supervisors of the township in which his road district is located, or with the board of county commissioners, as the case may be, his affidavit stating that a certain road in his district runs into or through swamp, bog, meadow or other low land, and that it is necessary or expedient that a ditch should be constructed and maintained through land belonging to any person, also stating the probable length of such ditch and the width and depth of the same as near as may be, the point at which it is to commence, its general course and the point at or near which it is to terminate, the names of the persons owning the land, if known, and a description of the land over which such ditch must pass, the board of township supervisors or county commissioners as the case may be, if the right to construct and maintain such ditch is not voluntarily given by the person owning the land over which it is to pass, shall cause proceedings to be instituted in its name under the provisions of the chapter on eminent domain in the code of civil procedure, to acquire the right to construct and maintain the same. § 87, sub-c. 2, c. 112, 1883. am'd.

§ 1152. **Penalty for injuring ditch.** Any person who shall dam up, obstruct or in any way injure any ditch so opened, shall be liable to pay to the overseer of highways of such road district double the damages caused by such injury, which shall be assessed by the jury or court and shall also be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a period not exceeding three months, or by a fine not exceeding one hundred dollars, and such damages and fine when collected shall be, by such overseer, expended on the roads in his district. § 92, sub-c. 2, c. 112, 1883.

ARTICLE 12. — ROADS ON LINE OF CITY OR VILLAGE.

§ 1153. **Roads on lines between township and city.** Whenever the supervisors of any township and the trustees or common council of any incorporated village or city 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 village or city, such road shall be laid out, altered or discontinued by two or more of the supervisors of such township, and a majority of the common council or trustees of such incorporated city or village. § 95, sub-c. 2, c. 112, 1883.

§ 1154. **Laws applicable.** The provisions of this chapter applicable to roads on the line between two townships shall be applicable to roads on the line between any township and an incorporated city or village. § 97, sub-c. 2, c. 112, 1883.

ARTICLE 13. — LAW OF THE ROAD.

§ 1155. **Vehicles turn to the right.** Whenever persons shall meet on any bridge or road, traveling with carriages, wagons, sleds, bicycles, or other vehicles, 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. § 49, c. 29, Pol. C. am'd.

§ 50, c.29, Pol.C.

§ 1156. Penalty for violation of last section. Every person violating the provisions of the preceding section shall for each offense forfeit a sum not exceeding twenty-five dollars, and shall also be liable to the party injured for all damages sustained thereby.

§ 51, c.29, Pol.C.

§ 1157. 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 his 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 person shall violate the provisions of this section, he shall forfeit and pay a sum of not less than ten nor more than fifty dollars, and shall be liable for all damages sustained thereby.

§ 52, c.29, Pol.C.

§ 1158. Unlawful not to hitch passenger teams. It shall be unlawful 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 charge or guidance of them so as to prevent their running; and if any person shall violate the provisions of this section, he and his employer shall each forfeit and pay 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.

§ 53, c.29, Pol.C.

§ 1159. Passenger conveyance. Liability of owner. The owner of each 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 with the driver of such vehicle to the party injured, in all cases, for all damages done by such driver while in the employment of such owner in driving such carriage, or other vehicle, to any person, whether the act occasioning such injury or damage was willful, negligent or otherwise.

ARTICLE 14.—BRIDGE PENALTIES.

§ 77, sub-c. 2, c.
112, 1883.

§ 1160. Notices on bridges. It shall be the duty of the county commissioners of each county of the state to cause notices to be posted at each end of all bridges in their respective counties, where the span of such bridge is fifty feet or more, stating the number of cattle, horses or other animals that may be driven onto or across such bridge at any one time.

§ 78, sub-c. 2, c.
112, 1883.

§ 1161. Driving cattle on bridges. Any person driving or having charge of any drove of cattle, horses or other animals who shall drive or permit more of such animals to enter upon or cross such bridge at any one time than is specified in such notice, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars.

§ 79, sub-c. 2, c.
112, 1883.

§ 1162. Penalty for driving across bridge faster than a walk. Whoever drives or rides upon any bridge, belonging to any incorporated bridge company or any bridge which has been or may be erected by any county or township, 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, a sum not less than five nor more than ten dollars for each offense.

§ 1163. **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, such justice shall issue his warrant in the usual manner, 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 county, to be dealt with according to law. § 80, sub-c. 2, c. 112, 1883.

§ 1164. **Judgment on conviction.** In all cases of conviction under the provisions of the foregoing sections 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. § 81, sub-c. 2, c. 112, 1883.

§ 1165. **Fine imposed only when notice is posted.** No fine shall be imposed under the provisions of this article unless there was at each end of such bridge at the time when such offense was committed, a conspicuous sign board upon which was printed the following: "Ten dollars fine for riding or driving on this bridge faster than a walk," or words importing substantially the same meaning. § 82, sub-c. 2, c. 112, 1883.

§ 1166. **Penalty for running tollgate.** 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 willfully runs the tollgate 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 lawfully requested so to do, 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 offense, which fine shall be prosecuted for and collected, together with the costs of prosecution in the manner prescribed in the preceding section. § 83, sub-c. 2, c. 112, 1883.

ARTICLE 15. — FERRIES.

§ 1167. **Ferries unlawful without lease. Must be two miles 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 person or property for hire or reward, without first having obtained a license therefor as hereinafter provided, and where but one bank or shore is in this state, the board of county commissioners of the proper county have the same authority, and this law applies with like effect, as if the entire stream was 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 nor more than one hundred dollars with costs to be recovered in an action in the name of the state. § 54, c. 29, Pol.C.

§ 1168. **Board of county commissioners to grant lease.** The board of county commissioners of the county to whom application shall be made for a ferry in the manner hereinafter provided, is hereby authorized and it shall be its duty to grant a lease of such ferry for a term not exceeding fifteen years, to such person or persons as shall bid, and secure the payment of, the highest amount of rent § 55, c. 29, Pol.C.

for the same, such lease to be executed by the board of county commissioners as lessors, and such bidder as lessee; and such board shall be empowered to extend to such person the lease so granted to any person 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 when in the opinion of the board of county commissioners of the county wherein such lease is granted the rates fixed by law for crossing such ferry are too high it shall have the right to fix such rates as in its judgment may seem just.

§ 56, c.29, Pol.C.

§ 1169. Rates of ferriage. The rates for crossing the Missouri River on ferries shall not exceed the following:

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 horse or mule led, 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.

Each ferryman is required to keep a schedule of his legal rates posted up in a convenient place at or near his ferry, in easy view of the passing public.

§ 57, c.29, Pol.C.

§ 1170. Ferries in unorganized counties. The secretary of state is authorized upon application to grant a lease of any ferry in any unorganized county, 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. All licenses granted by the secretary of state 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 provisions of law relating to organized counties.

§ 58, c.29, Pol.C.

§ 1171. Safety of ferry boats. Each person obtaining a lease to run 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 run 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 such ferry all persons and property presented for transportation across the same. If any lessee as aforesaid shall fail or neglect to perform all or any of the duties enjoined upon him by this and the preceding section or shall demand or receive a higher rate than is allowed in section 1169, the lessee so offending shall for each offense forfeit and pay the sum of ten dollars.

§ 59, c.29, Pol.C.

§ 1172. Penalty for unlawful ferry. If any person shall keep a ferry in any of the organized counties of this state without a lease 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 nor more than 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.

§ 1173. Money from ferry lease to go to school fund. § 60, c.29, Pol.C.

All moneys 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.

§ 1174. Temporary ferries. Nothing in this article 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. § 61, c.29, Pol.C.

§ 1175. Forfeiture for not maintaining ferry. All persons, who have heretofore received either a permit, lease, grant or charter in any form, either from the legislative assembly or any tribunal or board, for the keeping of a ferry of any kind, who shall neglect or fail during the period of one month at any one time, to keep their ferry 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 being made to the board of county commissioners of the proper county, of such failure or neglect, the board is authorized and empowered to declare such forfeiture absolute, and thereupon and thereafter all the rights, franchises and privileges, granted by or under this article, or any other law, shall cease and be of no force or effect. § 62, c.29, Pol.C.

CHAPTER 18.

REVENUE AND TAXATION.

ARTICLE 1.—EXEMPTIONS.

§ 1176. Property subject to taxation. Except as herein provided, all real property within the state of North Dakota, and all personal property owned by persons residing in the state, or used or kept therein, all moneys and credits, investments in bonds, stocks, joint stock companies, or otherwise, of persons residing in the state; the property of corporations now existing or hereafter created shall be subject to taxation, and such property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise shall be listed and entered on the list of taxable property for that purpose, in the manner prescribed by this chapter. § 1, c.28, Pol.C. am'd.

§ 1177. Property exempt from taxation. The following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given: § 2, c.28, Pol.C. am'd.

1. The property of the United States, and of this state, including school lands and bonds and securities of the United States.

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, including all grounds owned by any agricultural fair association, not exceeding forty acres and used exclusively for

agricultural exhibitions, and 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 meeting of fire companies, and the grounds and buildings of militia companies which are used exclusively for armory purposes.

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, used in any such institution 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 the students above named, the sum prescribed in their charter or act or articles of incorporation.

8. All animals not specified in the next section.

9. All public libraries.

10. All family pictures.

11. The polls or estates, or both, of persons who by reason of age or infirmity may, in the judgment of the assessor, be unable to contribute to the public charge; such opinion being subject to revision by the board of county commissioners.

12. All improvements made on real property by setting out either forest or fruit trees, shrubbery or vineyards, the same not to be considered as increasing the value of the land for taxation.

13. All pensions from the United States or from any of the states of the union.

14. The polls of all active members in good standing of any regularly organized volunteer fire company, not exceeding thirty in number in cities or towns of more than three hundred inhabitants; provided, that such fire companies actually and in good faith possess apparatus for the extinguishment of fires, exceeding five hundred dollars in value, to be determined by the assessor.

ARTICLE 2.—TAXABLE PROPERTY.

§ 3, c. 28, Pol. C.
am'd.

§ 1178. Classes of property subject to taxation. All other property, real or personal, shall be subject to taxation in the manner provided in this chapter, including:

1. All lands, and all lots in towns, villages and cities, including lands bought from or donated by the United States and from the state, and whether bought on credit or otherwise. 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.

2. Ferry franchises, toll bridges and toll roads, which for the purposes of this chapter 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; provided, however, that no full-blood, thoroughbred or standard-bred animal of any of the classes mentioned in this subdivision shall be considered of greater value for the purposes of taxation than common or grade of the same classes respectively.

5. Moneys, whether in possession or on deposit.

6. All credits, whether money, property, or labor due from solvent debtors on contract or in judgment, and whether within this state or not.

7. All stocks or shares held by any person or body corporate in any bank or company incorporated under the laws of this state, or pursuant to the provisions of the acts of congress providing a national currency secured by the pledge of the United States stocks or bonds, and providing for the circulation and redemption thereof, situated in or transacting business in this state. Promissory notes, mortgages and all other securities whether bearing interest or not.

8. All public stocks and loans, not including the bonds or securities of the United States.

9. All gold and silver plate, musical instruments, watches and jewelry.

10. All pleasure carriages, stage hacks, omnibuses and other vehicles for transporting passengers, all wagons, carts, drays, sleighs and every other description of vehicle or carriage.

11. All plows, harrows, reaping and mowing machines, harvesters, steam engines, horse powers, grain threshers and separators and all other implements and machinery appertaining to agricultural labor.

12. 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.

13. Annuities, but not including pensions from the United States or any other state of the union.

14. All manufactories, including building, machinery and materials.

15. All property, real or personal, within the state, in possession of, or under the control of, or held for sale by any warehouseman, agent, factor or representative in any capacity, or any manufacturer, dealer or other agent of any such manufacturer or dealer in agricultural implements, or machinery, or other goods, wares or merchandise.

16. Personal property of every description belonging to persons or companies doing freighting or transporting business within this state.

17. All household furniture in excess of twenty-five dollars in value.

18. All other property, real or personal, of any kind, not by this chapter specially exempt; and for the purposes of taxation real property shall be regarded as including the ownership or claim to, or possession of, or right of possession to any lands or mines in this state, or to any improvements thereon; and for the purposes of this chapter land shall cease to be government land when the final receipt of the receiver of the United States land office is issued upon entry thereof.

ARTICLE 3. — MANNER OF LISTING PROPERTY.

§ 4, c. 28, Pol. C.
am'd.**§ 1179. Commissioners to provide notices and blanks.**

On or before the first day of March of each year, the board of county commissioners of each county shall provide for the use of the assessor of said district suitable notices and blank forms for the listing and assessment of all property, and such instructions as shall be needed to secure full and uniform assessment and returns; and it shall be the duty of the state auditor on or before the first day of February of each year to prepare and send to the county auditor of each county suitable forms to be used as copies in the preparation of such blanks.

§ 1180. Auditor to furnish assessors notices and blanks.

It shall be the duty of the county auditor to furnish to the assessors, with the notices and blanks provided for in the preceding section, a list of all the lands which have become taxable during the preceding year in their respective districts.

§§ 5, 6, c. 28,
Pol. C.
am'd.**§ 1181. List of taxable property, contains what.** 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 commissioner district or township 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 or city in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering the town.

3. His right and title in any ferry franchise, toll bridge, toll road, or part thereof, by the total and actual cash value of the same.

4. The value of all buildings, machinery, and material used in manufacturing, and all appurtenances thereunto belonging.

5. Number of horses, one year old, two years old, three years old and over.

6. Number of mules and asses, one year old, two years old, three years old and over.

7. Number of neat cattle, one year old, two years old; number of cows, number of work oxen and number of all other neat cattle.

8. Number of sheep over six months old.

9. Number of swine over six months old.

10. Number of carriages and vehicles of every description.

11. Value of all implements used in agriculture.

12. Amount of money and credits, including the actual and total cash value of all such credits, notes and accounts.

13. All gold and silver plate, musical instruments, watches and jewelry.

14. Amount of stock or shares in any bank or banking association or incorporated company.

15. Amount and description and value of all property, machinery, merchandise held and controlled as agent of any manufacturing company.

16. Value of all private libraries.

17. All real property sold by any party or corporation under any form of grant or conveyance, or contract therefor, to 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 to hold as taxable any lands held under the homestead, pre-emption or timber culture laws of the United States before final receiver's receipt issued for the same.

18. All household furniture.

19. All other property not specifically enumerated in this section, except such as is specially exempted by this chapter.

The above list of items may be extended at the discretion of the state auditor or the board of county commissioners, so as to obtain such facts as they may deem desirable.

§ 1182. Property listed, by whom, when and how. All taxable property, real and personal, shall be listed and assessed each year in the name of the persons who were the owners thereof on the first day of April of each year, including all property purchased on that day, and at its cash value on that date, and such property shall be listed and assessed by the assessors as soon as practicable on or after the first day of April. And in order to make such assessment, such assessor shall demand from each person and firm, and from the president, cashier, treasurer or managing agent of each corporation, association or company within his district, excepting incorporated banks or banking associations, a statement under oath or affirmation of all the real estate within his district or township, and personal property owned by, claimed, or in the use, possession or control of such person, firm or corporation, association or company on said first day of April. If any person, firm or officer or agent shall neglect or refuse, on demand of the assessor, to give, under oath or affirmation, the statement required by this chapter, the assessor shall ascertain and estimate from the best information he can obtain, the number, amount and cash value of all the several pieces of property required, and shall list the same accordingly. § 8, c. 28, Pol. C.
am'd.

§ 1183. Agent to list property. Liability for failure. Any person acting as the agent of another, and having in his possession or under his control or management any moneys, notes, credits or personal property belonging to such other person with a view of investing or loaning, or in any other manner using the same for pecuniary profit, shall be required to list the same, and such agents shall be personally liable for the tax on the same, and if he refuses to render the list or to swear to the same, the amount of such money, property, notes and credits may be listed and valued according to the best knowledge and judgment of the assessor.

§ 1184. Bank stock to be listed by cashier. The cashier or principal accounting officer of each bank, whether incorporated under the laws of this state or not, and of each national bank incorporated or doing business under the laws of the United States shall list the shares of the bank or association, giving the assessor the name of each person owning shares and the number of shares owned by each, which shares shall be assessed at their true cash value, and for the purpose of securing the collection of taxes assessed upon said shares, each bank or banking association shall be required to pay the same, as agents of the shareholders, under the provisions of section 1183. And the bank or banking association shall retain so much of any dividends belonging to any shares or stocks thereof; and such bank or banking association shall have a lien upon the stock owned

by such shareholder for the amount of any and all taxes levied upon such shares, until such tax shall be paid by the shareholder, or until the bank shall be fully indemnified.

§ 1185. National bank stock, how listed. If at any time congress shall amend the acts aforesaid relating to national banks, then each assessor shall assess the shares in any such national bank in such manner as to conform to such amended act of congress.

§ 1186. Elevators personal property and listed to owner. All elevators, warehouse or grain houses, and all machinery and fixtures and grain therein, situated upon the line of any railroad corporation in this state, shall be taken and deemed to be for all purposes of taxation personal property, and the same shall be listed and assessed in valuation in the town or district in which such elevator, warehouse, grain house, machinery or fixtures may be situated, and shall be listed and assessed in the name of the owner, if known, and if not known, the same shall be listed and assessed to "owner unknown," and all taxes assessed upon such property shall be paid to the county treasurer of the county where such property is situated.

§ 1187. Buildings on right of way, personal property. All buildings and other property situated upon the line or right of way of any railroad company in this state, and which buildings and property are not owned, operated and exclusively used in and about the prosecution of the business of such railroad companies as common carriers, shall be taken and deemed to be for all purposes of taxation personal property, and the same shall be listed and assessed as provided by law for the assessment of such personal property, except as otherwise provided in this chapter.

§ 9, c. 28, Pol. C.

§ 1188. Assessor may estimate value, when. Oath. If the owner of any property not listed by any other person shall be absent or unknown, the assessor shall ascertain and estimate the value thereof, and if the name of such owner is known to the assessor, the property shall be assessed in his name; if unknown to the assessor, the property shall be assessed to "unknown owners." The list shall be signed and sworn to by the person making it, and the oath thereto may be administered by the assessor or his deputy, or by any other officer authorized to administer oaths, and shall be certified by him, and the oath may be printed upon the blank form, and shall be in substance as follows:

I, A. B., do solemnly swear (or affirm) that I have listed above and within all the lands, town and city lots, personal property, money, stocks, shares and credits, subject by law to taxation and owned, used, possessed or controlled by me, or by law required to be listed by me for another person or persons, as guardian, husband, parent, trustee, executor, administrator, receiver, cashier, accounting officer, partner, factor, bailee or agent, according to the best of my knowledge.

§ 10, c. 28, Pol. C.
am'd.

§ 1189. Assessor may examine under oath, when. Whenever the assessor shall be of 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, and the assessor shall make a minute of the name of such person refusing to swear or affirm to such list or to testify in relation to

the property and a full discovery make, and shall note the same on the list and return the same to the board of county commissioners, and the said board shall add fifty per cent thereof to the amount of the property returned by the assessor as the list of the person so refusing to swear or affirm.

§ 1190. Statements of persons refusing to swear. The said statements of persons refusing to swear or affirm shall be indorsed with the name of the person whose property is therein listed, and the assessor shall file them in alphabetical order and return them to the office of the county auditor by the first Monday of July next ensuing, at which time, or before, he shall also prepare and deliver his assessment roll. All property is to be valued by the assessor except as is herein required to be valued by the owner, agent or other person having control of the same. § 11, c.28, Pol.C.

§ 1191. Oath of assessor. Form. The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath is to be in substance as follows: § 12, c.28, Pol.C.

I, A. B., (district or township assessor, as the case may be) in and for the county of....., state of North Dakota, do solemnly swear that the value of all property, moneys and credits of which a statement has been made and verified by the oath of the person required to list the same, is hereby truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate, I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full cash value thereof is set forth in the above returns. And that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and cash value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessments of property for taxation.

§ 1192. Penalty for false listing. If any person shall willfully make or give under oath or affirmation, a false list of his taxable property, or a false list of the taxable property in his use or possession or under his control, and required by law to be listed by him, or shall willfully affix thereto less than the cash valuation thereof, 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. § 13, c.28, Pol.C.
am'd.

§ 1193. Penalty for willful omission or undervaluation. When the party required to list property and affix the value thereto, shall willfully omit property which he should list, or shall affix thereto a less than the cash valuation thereof, with the knowledge of the assessor, or where the assessor required shall willfully affix to property of any kind a valuation less than the cash valuation thereof, such assessor shall be deemed guilty of perjury, and in addition thereto shall for each offense forfeit the sum of ten dollars, to be deducted from his compensation by the board of county commissioners or township supervisors, as the case may be.

§ 1194. "Credits" defined. The term "credits," as used in this chapter, includes every claim and demand for money, labor or other valuable thing, and every annuity or sum of money receivable at § 14, c.28, Pol.C.
am'd.

stated periods, and all moneys in property of any kind, and secured by deed, mortgage or otherwise; but pensions from the United States, or any state, or bonds and securities of the United States are not included in the above terms.

§ 15, c.28, Pol.C.
am'd.

§ 1195. Property listed, how and by whom. Every inhabitant of this state of full age and sound mind, unless excepted by the provisions of this chapter, shall list all property subject to taxation in this state, of which he is the owner, or has the control or management in the manner herein directed; but the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living; if not, then by the person having the property in charge; of a married woman, by herself, but if she is unable or refuses, then by her husband; of a beneficiary for whom property is held in trust, by the trustee; the personal property of a decedent, by the executor, administrators or heirs; of a body corporate, company, society or partnership, by the cashier, principal accounting officer, agent or partner; property under mortgage or lease, to be listed by and taxed to the mortgagor or lessor, unless it is listed by the mortgagee or lessee; property assigned for the benefit of creditors, and property in the hands of a receiver, by the assignee or receiver.

§ 16, c.28, Pol.C.
am'd.

§ 1196. Commission merchants and consignees list in their own names, when. Commission merchants, and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in the state, are, for the purpose of taxation, required to list in their own names all the property in their possession.

§ 17, c.28, Pol.C.
am'd.

§ 1197. Personal property of nonresidents, where listed. Penalty. In listing personal property, if the owner thereof resides out of the state, it is to be listed and taxed where it may be at the time of listing, except as herein otherwise provided, and, if in possession of an agent or person having charge thereof, and such agent or other person shall neglect to list it, he will be subject to the penalties herein provided.

§ 18, c.28, Pol.C.
am'd.

§ 1198. Listing by agent. Property of a deceased. A person required to list property in behalf of another shall list in the same district in which he would be required to list it if it was his own, except as herein otherwise directed. But he must list it separate from his own, naming the person to whom it belongs. But the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs without enumerating them.

§ 1199. Telephone property, where listed. All telephone property within this state, including lines, instruments of every kind, office furniture, etc., owned, managed or constructed by companies, associations, partnerships or individuals, shall be listed and assessed at its true cash value, in the county where situated.

§ 20, c.28, Pol.C.

§ 1200. Property and credits in two or more counties, where listed. When a person is doing business in more than one county, the property and credits existing in any one of the counties are to be listed and taxed in that county, and credits not existing in, nor pertaining especially to, the business in any county, are to be listed and taxed in that county where his principal place of business may be. Each individual of a partnership is liable for the taxes due from the firm.

§ 1201. **Range stock, where listed.** The owner of range stock, including cattle, horses or sheep, or his agent, foreman or superintendent, shall list the same for purposes of assessment and taxation in the commissioner district or township in which he claims his home ranch for rounding and branding purposes, and where his herdsmen or employees are boarded and subsisted, regardless of where the cattle may range.

§ 1202. **Range stock of nonresidents, where listed.** If such owner of range stock, including horses, cattle or sheep, has at the time the assessment is made, no such home ranch, then such range stock shall be listed in the commissioner district or township in which the home ranch was situated at the last round-up and branding; provided, that any such stock, owned outside of this state, and ranging within this state, shall be assessed wherever and whenever found ranging within this state.

§ 1203. **Range stock in unorganized counties, where listed.** When the home ranch of any owner of range stock is situated in an unorganized county of this state, such range stock shall be subject to taxation in the organized county to which it is attached for judicial purposes, and shall be listed and assessed by the assessor of the commissioner district or township lying in closest proximity to such home ranch.

§ 1204. **Combination for undervaluation. Penalty.** If any assessor or county commissioner shall enter into any contract, agreement or understanding with the owner of any range stock, whereby and pursuant to which such stock are to be assessed at less than their cash value, in consideration that the owner of such range stock shall remove his home ranch into the county of such assessor or commissioner, such assessor or commissioner and the owner of such range stock and all persons aiding or abetting such corrupt transaction and agreement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail for not less than three months, nor more than six months.

§ 1205. **"Merchant" defined.** Any person owning or having in his possession or control in this state, with authority to sell the same, any personal property, purchased either within or without the state, with a view of selling the same at an advanced price or profit, or which has been consigned to him for the purpose of being sold within the state, shall be held to be a merchant for the purposes of this chapter; such property shall be listed for taxation to said merchant, and in estimating the value thereof, the merchant shall take the value of such property in his possession or control on the first day of April next preceding the time for making the assessment. § 24, c. 28, Pol.C.

§ 1206. **"Manufacturer" defined.** Any person who purchases, receives or holds property of any description for the purpose of adding value thereto by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this chapter, and he shall list for taxation the value of such property in his hands, estimated as directed in the previous section in case of merchants, but the value shall be estimated upon the materials only entering into the combination or manufacture; provided, that the completed product of such process, held § 25, c. 28, Pol.C. am'd.

by the manufacturer for sale shall be regarded as merchandise, and assessed at its value as such.

§ 1207. Values, how determined. Exception. The values of all property, real and personal, listed for taxation, shall be determined and affixed by the assessor; provided, that the value of stocks, bonds, notes, mortgages, credits, securities, annuities and other property, the value of which is peculiarly within the knowledge of the owner or person listing the same, may be given by him, subject to review by the assessor. But this proviso shall not apply to any live stock, real estate, nor to the stock or shares in banking or mining associations or corporations doing business in this state.

§ 1208. Assessor to give notice of equalization. The assessor shall, before administering the oath or affirmation as provided in section 1188, to the person listing the property, inform him of the valuation put upon his property, and notify him, if he feels aggrieved thereby, to appear before the board of county commissioners, when in session for the purpose of equalizing the assessment, and show cause, if any he has, why the same should be changed.

§ 26, c. 28, Pol. C.
am'd.

§ 1209. Assessor to deliver assessment roll. Contents of. On or before the first Monday of July, annually, the several district assessors shall make out and deliver to the county auditor an assessment roll, consisting of the following items:

1. A list of all the taxable lands in their respective districts in numerical order, beginning at 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 name in a column provided for that purpose, and the assessed value thereof 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 ASSESSOR DISTRICT NO. IN.....
COUNTY, NORTH DAKOTA, FOR THE YEAR

Owner's Name.	Part of Section.	Section.	Township.	Range.	Acres.	Value of Land.	Value of structures and improvements.	Total Value.

2. A list of all town lots in each town or city in their respective districts, 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:

Owner's Name.	Town or City.	Block.	Lot.	Value of Lot.	Value of structures and improvem'ts	Total Value.

Names.	
Merchandise.	
Manufactures.	
1 Year Old.	
Value.	
2 Years Old.	
Value.	
3 Years Old	
and Over.	
Value.	
1 Year Old.	
Value.	
2 Years Old.	
Value.	
3 Years Old	
and Over.	
Value.	
1 Year Old.	
Value.	
2 Years Old.	
Value.	
3 Years Old.	
Value.	
Cows.	
Value.	
All Other Cattle.	
Value.	
Sheep.	
Value.	
Swine.	
Value.	
Carriages.	
Value.	
Agricultural Imple ^t .	
Value.	
Money and Credits.	
Stock or Shares.	
Other Personality.	
Total.	
Poll Tax.	
Remarks.	

ARTICLE 4.—BOARDS OF EQUALIZATION.

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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.

§ 40, c. 132, 1860.

§ 1212. Assessor to give notice of equalization. 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.

§ 28, c. 28, Pol. C.
am'd.

§ 1213. County equalization board. Meetings of. It shall be the duty of the board of county commissioners of each county, at its regular meeting in July of each year, to devote the first two days, or more if necessary, of such meeting to the proper equalizing and correcting of the assessment roll in its county; and in order to equalize and correct such assessment roll, it may change the valuation and assessment of any property, real and personal, upon the roll by increasing or diminishing the assessed valuation thereof, as shall be reasonable, and so as to render taxation uniform.

§ 29, c. 28, Pol. C.
am'd.

§ 1214. Rules for equalization. The said board of county commissioners must also 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 for the same a reasonable, just and uniform valuation; provided, that no such property shall be added to the assessment roll by the county commissioners until notice of their intention so to do shall be given to the owner thereof. 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 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, and if any person returned as refusing to render a list, or to be sworn thereto, or to the list of the property of another returnable by him, can show good

cause for such failure or refusal, the penalty herein provided may be remitted; provided, that in equalizing the assessment of all property, personal and real, said board must be governed by the value of such property on the first day of April preceding, or, if that cannot be reasonably and justly ascertained, by its average value during the year.

§ 1215. Abstract of assessment, contents of. Auditor. § 31, c. 28, Pol. C.
am'd.

As soon as practicable, after the assessment rolls are equalized and corrected, as provided in the preceding two sections, and before the third Monday in July next ensuing, the county auditor shall make out an abstract thereof containing:

1. The whole number of acres of land listed in the county and the total value thereof.
2. The total valuation of town and city lots.
3. The amount of property invested in merchandise.
4. The amount of property invested in manufactures.
5. The number of horses one year old and their total value.
6. The number of horses two years old and their total value.
7. The number of horses three years old or over and their total value.
8. The number of mules and asses one year old and their total value.
9. The number of mules and asses two years old and their total value.
10. The number of mules and asses three years old or over and their total value.
11. The number of neat cattle one year old and their total value.
12. The number of neat cattle two years old and their total value.
13. The number of cows and their total value.
14. The number of other neat cattle and their total value.
15. The number of sheep and their total value.
16. The number of swine and their total value.
17. The number of carriages and vehicles of every kind and their total value.
18. The total value of agricultural implements.
19. The total value of moneys and credits.
20. The total value of stocks and shares.
21. The total value of all other personal property, not enumerated under the foregoing heads.

Which abstract the clerk is directed to transmit without delay to the auditor of the state, and the county commissioners are authorized to direct the auditor to add to the above list of items as they may deem advisable; and it shall be the duty of the auditor of the state, to furnish such forms for the use of the county commissioners, assessors, auditors and other officers of the revenue as shall secure uniformity of proceedings and returns throughout the state.

§ 1216. State board of equalization. Meetings. Duties. Rules. § 46, c. 132, 1890.
am'd.

The governor, state auditor, attorney general, commissioner of agriculture and labor and state treasurer, shall constitute the state board of equalization, and said board of equalization shall hold a session at the capital of the state, commencing on the second Monday of August of each year, and it shall be the duty of said board to examine the various county assessments and to decide upon the rate of the state tax to be levied for the current year, together with any other general or special state taxes required by law to be levied, and

they shall examine and compare the returns of the assessment of the property in 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 full value. In the performance of their duties they shall be governed by the following rules:

1. They shall add to the aggregate valuation of the real property of every county, which they believe to be valued below its true and full value in money, such per cent in each case as will bring the same to its true and full value in money.

2. They shall deduct from the aggregate valuation of the real property of every county which they believe to be valued above its true and full value in money, such per cent in each case as will reduce the same to its true and full value in money.

3. They shall take from the aggregate valuation of any class of personal property in any county, which they believe to be valued above the full and true value thereof, such per cent as will reduce the same to its true and full value in money.

4. They shall add to the aggregate valuation of any class of personal property in any county, which they believe to be valued below the full and true value thereof, such per cent in each case as will raise the same to its true value in money.

5. They shall not reduce the aggregate valuation of all property in the state, as returned by the several county auditors.

ARTICLE 5. — RATE OF TAXATION AND LEVY.

§ 33, c. 28, Pol. C.
am'd.

§ 1217. Tax rate of state and county. Road tax. Sinking fund. The rate of the general state tax shall not be more than four mills on the dollar valuation; and for ordinary county revenue, including the support of the poor, not more than six mills on the dollar; and for roads and bridges, a poll tax of one dollar and a half, or one day's work, on every male person between the ages of twenty-one and fifty years; a bridge tax not to exceed two mills on the dollar; and a road tax, not exceeding two mills on the dollar valuation, to be paid in money or in labor at the rate of one dollar and a half per day, at the option of the person taxed, and the certificate that the person named therein has actually performed eight hours labor for each day's work so certified, shall be received by the county treasurer in discharge of said tax to the amount so certified; and a further tax of not to exceed two mills on the dollar upon all taxable property in the county; for county sinking fund such rate as may be fixed by any funding act passed by the legislative assembly, or in the absence of a provision in any such act, then such rate as in the estimation of the board of county commissioners will pay one year's interest on all the outstanding debts of the county, with twelve per cent on the principal sum as may be provided in any funding act.

§ 34, c. 28, Pol. C.
am'd.

§ 1218. State auditor to transmit rate to county auditor. On or before the fourth Monday in August in each year, the state auditor is required to transmit to the county auditor of each county a statement of the rate of taxation required in said county for the general state tax, as directed to be levied and collected by the state board of equalization. Should the state board of equalization fail to fix the rate of taxation in any or all of the counties, then the auditor is required to notify the county auditors of the rate to be levied and collected in such county or counties, which must not exceed four

mills on the dollar for state purposes, and one mill on the dollar for the payment of interest on public debts, and it must be in mills or tenths of mills and uniform for all the counties.

§ 1219. County tax levy, when made. On the first Monday 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 first Monday in September, if the statement from the state board of equalization has not been received, but such levy must not be postponed for more than ten days, and they shall levy the taxes as herein directed. § 35, c. 28, Pol.C.
am'd.

§ 1220. State rate determined, how. The rate of the general state tax shall be as directed by the state board of equalization, or by the state auditor; but in case the statement of the levy of such taxes, as hereinbefore directed has not been received by the county auditors within ten days after the said first Monday in September, then the said board of county commissioners shall levy the general state tax at the rate of four mills on the dollar valuation. § 36, c. 28, Pol.C.
am'd.

§ 1221. County auditor to make duplicate tax lists. As soon as practicable after the taxes are levied the county auditor shall make out a tax list in duplicate, transcribing the assessment of the several districts into a suitable book to be provided at the expense of the county, properly ruled and headed with distinct columns, in which there shall be entered the names of the taxpayers, description of land, number of acres, of valuation, number of town lots and value of personal property, each description of tax with a column for polls, one for total tax and one for payment, leaving a margin for remarks; provided, that all taxes which are uniform throughout the county shall be formed into a single tax, entered upon the tax list in a single column, and denominated a consolidated tax, and each tax receipt shall show the percentage levied for each separate fund. § 37, c. 28, Pol.C.
am'd.

§ 1222. Duty of auditor. Lists furnished. It shall be the duty of the county auditor in every county within the state having any organized townships to furnish to the town clerk of every township on or before the first day of December in each year, a complete list of all the land assessed in the township of which he is clerk, together with the name of the owners of each piece of land and the amount of taxes against each piece of land. Also a list of the names of each person or company owning any personal property in said township and the amount of personal taxes against each person or company. § 1, c. 41, 1895.

§ 1223. Indorsement of tax list. Warrant for collection. An indorsement is required to be made upon the duplicate tax lists showing what they are and for what county and year they are made, and the county commissioners shall attach to said duplicate lists their warrants under their hand and official seal in general terms, requiring the treasurer to collect the taxes therein levied according to law, and no informality therein, and no delay in the delivery of the same after the time herein specified shall render any proceeding for the collection of taxes illegal, and the county auditor shall, on or before the first Monday of December following of each year, deliver one of the aforesaid duplicate tax lists to the county treasurer, with the warrant of the county commissioners attached, and take his receipt therefor, and such list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained. § 40, c. 28, Pol.C.
am'd.

ARTICLE 6 — THE COUNTY TREASURER AND HIS DUTIES.

§ 1224. **Treasurer to enter delinquent taxes on list.** The treasurer, on receiving the tax list from the county for each year, shall enter upon the same in separate columns opposite each parcel of real property or person's name, on which or against whom any tax remains unpaid for either of the preceding years, the year or years for which such delinquent tax so remains due and unpaid, and the amount for each year, and any sale for the whole or any part of such delinquent tax not so entered shall be invalid.

§ 41, c. 28, Pol. C.
am'd.

§ 1225. **Treasurer to collect and receipt for taxes.** The county treasurer of each county shall attend at the county seat at all times to receive the taxes due and unpaid, and is authorized and required to collect, so far as practicable, the taxes remaining unpaid on the list of the former year or years.

§ 52, c. 132, 1890.
am'd.

§ 1226. **Treasurer shall collect all taxes, fines and penalties. Deputies.** The county treasurer shall be the collector of all taxes assessed upon the duplicate in his county, whether assessed for state, county, city, town, township, school, poor, bridge, road or other purposes; and also of all fines, forfeitures or penalties received by any person or officer for the use of his county, and he shall also proceed to collect the same according to law, and to place the same, when collected, to the credit of the county. But this provision shall not be so construed as to include any fines or penalties accruing to any municipal corporation for the violation of its ordinances and which was recovered before any city justice. Each county treasurer may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity, and shall in all cases be liable and accountable for the proceedings and misconduct of his deputies in office.

§ 42, c. 28, Pol. C.

§ 1227. **Warrants to be received for taxes.** State warrants are receivable for the amount payable into the state treasury on account of the general state tax, and county warrants are receivable at the treasury, except when otherwise provided by law; and city warrants shall be received for city taxes, but United States treasury notes, or their equivalent only, are receivable for such taxes as are or may be required by law to be paid in cash, and road and poll taxes may be discharged as provided in this chapter.

§ 43, c. 28, Pol. C.
am'd.

§ 1228. **Duplicate receipts, disposition of.** Whenever any taxes are paid to the county treasurer, the treasurer shall make out duplicate receipts for the same, which duplicate receipts shall correspond in number, date, amount, and in every respect shall be precise copies of each other, one of which shall be delivered to the person paying such taxes, and the other shall, within seven days after the close of business each day, be filed by the treasurer with the county auditor, as hereinafter directed, and such duplicate receipts shall specify the land or other property upon which such tax was assessed, according to the description on the tax duplicate, or in some sufficient manner, and shall also specify the amount in manner and form as appears on the tax list.

§ 45, c. 28, Pol. C.
am'd.

§ 1229. **Tax receipts. Auditor to charge treasurer.** It shall be the duty of the county 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 the taxes and interest which, according to the tax list and terms of the receipt, he should have collected, then the county 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.

§ 1230. Tax receipts, consecutively numbered each year. § 46, c.28, Pol.C.
All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year, for which the same has been levied and assessed in this state.

§ 1231. Duty of auditor and treasurer when taxes paid. § 47, c.28, Pol.C.
Whenever any taxes are paid the treasurer shall write on the tax duplicate, opposite the description of the real estate or property whereon the same was 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 receipts shall forthwith make the same entries on the tax list in his possession.

§ 1232. Treasurer to keep a cash book. § 48, c.28, Pol.C.
The county treasurer is required to keep a cash book, in which he shall enter an account of all the moneys 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 the several items as the same appear on the tax list, and the amount paid in road orders and supervisors' receipts, each in a separate column, and the total amount for which the order or receipt was given in another column, and the treasurer shall 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 or assessed for any other year, and all entries in said cash book of moneys received for taxes, shall be in the numerical order of the receipts issued therefor.

§ 1233. Receipts for fines. Office hours. Custodian of warrants. § 49, c.28, Pol.C.
Whenever the treasurer receives any money on account of fines or any other account, except taxes charged on the duplicate, he shall make out duplicate receipts, one of which receipts he shall deliver to the person paying, and the other he shall deposit with the county auditor at the close of business each day, in order that the treasurer may be charged with the amount thereof. The treasurer shall enter the same in his cash book, as in case of moneys received for taxes, but in a separate place, and with a separate and distinct series of numbers of receipts issued therefor. The county treasurer shall keep his office open from nine o'clock A. M. to four o'clock P. M. of each business day, and shall, within seven days after the close of business on each day, transmit to the county auditor the duplicate receipts of all moneys received and canceled by him during the day, all warrants paid, all receipts taken and received for money paid out, except as hereinbefore provided. The auditor shall be custodian of such receipts, warrants and vouchers, and shall keep the same in some safe place to be provided by the county commissioners. He shall receipt to the treasurer for each and every receipt, warrant and

voucher delivered to him, stating in said receipt the number and amount of each receipt, warrant and voucher. The county auditor shall forthwith compare said tax receipts and all other receipts, warrants and vouchers with the books of the treasurer; and if, upon said comparison, he finds said receipts are in all respects correct, and are given for the actual amount due and paid into the treasury or for the amount actually paid out, as the case may be, that the warrants were actually paid, and that all such items and amounts have been properly entered upon the treasurer's books, he shall so certify on the back of said receipts; but if any errors or omissions are found, he shall report the same to the county commissioners without delay, unless the error is corrected in his presence.

§ 1234. Apportionment of taxes, penalty and interest. The treasurer of each county shall, on the first Monday of each month, apportion the consolidated tax of each county, collected during the preceding month, among the several funds to which it belongs, according to the number of mills levied for each fund contained in such consolidated tax, and shall also apportion all penalty and interest to the several funds on which the same accrued, and having entered the amount of tax for each fund, including other taxes collected during the preceding month, upon his cash account, he shall report the amount of each distinct tax to the county auditor, who shall charge him with the same.

§ 51, c. 28, Pol. C.

§ 1235. Auditor to keep duplicate treasurer's cash book. The county auditor is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same.

§ 52, c. 28, Pol. C.

§ 1236. Erroneous assessment, how and by whom corrected. If on the assessment roll or tax list there is 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 is 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.

§ 53, c. 28, Pol. C.
am'd.

§ 1237. Demand. Distress and sale. Removal from county. No demand of taxes shall be necessary; but it shall be the duty of every person subject to taxation under this law to attend at the treasurer's office at the county seat and pay his taxes, and if any person so fails to attend and pay his taxes, until after the first of October, after the same shall have become due, the treasurer is directed and required to collect the same by distress and sale; provided, that in case any person, having only personal property assessed, and upon which the taxes are unpaid, shall in the opinion of the treasurer, be about to move out of the county, it shall be the duty of the treasurer to collect such taxes at any time after the tax duplicate has been placed in his hands; provided, however, that in case any person owing taxes removes from any county in this state to any other county in this state, the county treasurer shall forward such claim to the treasurer of the county to which such person has removed, and such taxes shall be collected by the county treasurer of the latter

place, as other taxes and returned to the proper county, less legal charges.

ARTICLE 7.—DELINQUENCY, PENALTY AND LIEN OF TAXES.

§ 1238. Taxes delinquent, when. Penalty. Interest.

All unpaid taxes, both personal and real, shall become due on the first day of December of the year in which said taxes are assessed and levied and all taxes shall become delinquent on the first day of June after the same become due. A discount shall be allowed on all taxes paid as follows: One per cent on all sums paid within fifteen days after the same shall have become due, and one-half of one per cent on all sums paid within thirty days after the same shall have become due. Thirty days after each of said taxes shall become delinquent there shall be added thereto a penalty of three per cent and the taxes shall thereafter draw interest at the rate of one per cent per month until paid or discharged by distress or sale.

§ 1239. Taxes a perpetual lien. Vendor and vendee.

Taxes upon real property are hereby made a perpetual lien thereupon against all persons and bodies corporate, except the United States and the state, 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 a title, or upon any personal property owned by him at the time the tax becomes due, or which may be subsequently acquired by him, and the title to any of which personal property so owned or subsequently acquired remains in him at the time of the distraint. All taxes shall, as between vendor and purchaser, become a lien upon real estate on and after the first day of December in each year.

§ 56, c. 28, Pol. C.
am'd.

ARTICLE 8.—COLLECTION BY DISTRESS.

§ 1240. Sale by distress. Notice. Proceeds.

When the treasurer distrains personal property, he may keep it at the expense of the owner, and he shall give notice of the time of the sale within five days after the day of the taking, in the same manner that constables are required to give notice of the time of sale of personal property on execution; but he may adjourn the sale from time to time for a period not to exceed three days, and shall adjourn once at least when there are no bidders; and in case of an adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges for keeping, fees for sale, fees for levying on the property and mileage, to be the same as allowed by law to sheriffs for levying an execution on personal property, shall be returned to the owner and the treasurer shall render an account in writing of the sale and charges with his regular report to the board of county commissioners.

§ 57, c. 28, Pol. C.
am'd.

§ 1241. Treasurer may summon posse. Penalty for refusal.

If the treasurer is 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 refuses to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process.

§ 58, c. 28, Pol. C.

§ 1242. Payment of taxes continued.

The treasurer shall continue to receive payment of all taxes upon the above terms until collected by distress and sale.

§ 59, c. 28, Pol. C.
am'd.

§ 80, c. 28, Pol. C.
§ 1, c. 120, 1881.

§ 1243. Treasurer released from collection, when. 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 upon the personal property of any person or corporation, or any executor or administrator, guardian, receiver, assignee, agent or factor, such treasurer shall file with the county auditor, on the first Monday of August following, a list of such taxes, with an affidavit of himself or his deputy intrusted with the collection of said taxes, stating that he had made diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same, and such other facts as he shall deem of importance to the county commissioners. The county auditor shall present said lists to the county commissioners at their first meeting, then or thereafter in session, and the said board shall examine such taxes so returnable, 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 proceed again to collect the same, and it shall be his duty to proceed again to collect said taxes in the manner provided by law.

§ 2, c. 120, 1881.

§ 1244. Treasurer liable for delinquent taxes, when. If any county treasurer shall neglect or refuse to collect any tax assessed on personal property when the same is collectible, or to file the delinquent list and affidavit as herein set forth and provided, he shall be held liable in his next settlement with the county commissioners for the whole amount of such taxes uncollected, and the same shall be deducted from his salary or fees and applied to the several funds for which they were levied.

§ 3, c. 120, 1881.
am'd.

§ 1245. Fees and mileage for demand, levy and sale. County treasurers shall be allowed for making demand for such taxes where no levy is made on property, ten cents per mile for each mile necessarily and actually traveled, and when levy is made, the fees allowed by law to sheriffs for any levy and sale of property on execution, which fees and mileage shall be paid to the treasurer of that county by the person, corporation, executor, administrator, guardian, receiver, assignee, agent or factor from whom such tax or taxes are due.

§ 1246. Clerk of township, village or city to transmit rate of taxation, when. The town clerk of any organized township, clerk of any town or city, or secretary of any board of education, the clerk of any school district or school township or any other officer who is now or may hereafter be by law authorized to perform the duties herein specified, shall, on or before the first Monday in September, annually transmit to the county auditor the rate of taxation levied in such township, town, city, independent school district or school township for that year; and it shall be the duty of the county auditor to enter and levy the same on the tax list.

§ 1247. Treasurer to pay municipal corporation taxes, when. The county treasurer of the county shall pay over to the treasurer of any municipal corporation, organized township, school district or any other body politic, on the order of the proper officers at any time, all moneys received by him arising from taxes levied and col-

lected belonging to such municipal corporation, organized township, school district or any other body politic, and immediately after his quarterly settlement in each year, pay over all moneys and take triplicate receipts therefor, and file one with the clerk of the town, city, township, school district or other body politic, and one with the county auditor, and such moneys as said treasurer may receive after that time for delinquent taxes belonging to such township or other corporation, he shall pay over to the treasurer thereof, on demand or the order of the proper officers, and he shall take duplicate receipts of the treasurer of said township or corporation for said moneys, one of which he shall retain and one of which he shall file with the county auditor, and for a failure to pay over money held by him to the proper authority when demanded, or a failure to account for money received by him as required by law, he shall be deemed guilty of felony and, upon conviction, shall be punished by confinement in the penitentiary not less than one year nor more than three years.

§ 1248. County responsible for state taxes. Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double or erroneous assessments as hereinafter provided.

§ 1249. County to pay state if treasurer defaults. Recourse. If any county treasurer proves to be a defaulter to any amount to state revenue, such amount shall be made up to the state within the next three coming years by additional levies in such manner in annual amounts as the board of commissioners may direct. In such cases the county can have recourse to the official bond of the treasurer for indemnity.

§ 1250. Treasurer's reports, when. The treasurer of each county shall, on or before the fifth day of April, July, October and January in each year, prepare and file with the county auditor a sworn statement of the amount of money in his hands on the last day of the preceding quarter, belonging to each and every fund with which he is by law required to keep account.

§ 1251. Settlement with county treasurer, when made. At the regular meetings in January and July of each year the board of county commissioners shall make a full and complete settlement with the county treasurer, and they shall make and certify to the state treasurer all credits to the county treasurer for double or erroneous assessments and unavailable taxes, also all dues for state revenue, interest or delinquent taxes, sales of lands and other dues, if any, also the amounts collected for these several items and revenues still delinquent each year by itself. Said reports shall be forwarded by mail.

§ 1252. Treasurer pays state, when. The treasurer of each county shall, on or before the fifteenth day of April, July, October and January, prepare a sworn statement of the amount of money in his hands for the quarter ending the last day of the preceding month belonging to the state treasury, and forward the same by mail to the treasurer of the state, and he shall each year pay into the state treasury on or before the fifteenth day of July all the money due the state remaining in his hands on the first day of July, and on or before the fifteenth day of January all the money due the state remaining in his hands on the first day of January; he shall also, at any time when directed by the state treasurer, forthwith pay into the state treasury all the money due the state and remaining in his hands. In case the

treasurer of any county shall fail to prepare and forward the statement required in this section, he shall forfeit and pay for each and every failure the sum of five hundred dollars, to be recovered in an action brought by the attorney general in the name of the state against him and his bondsmen, in any court of record.

§ 1253. State treasurer transmits county statement to auditor, when. The state treasurer shall make and transmit to each county auditor on the fifteenth day of June of each year a statement of the county treasurer's account with the state treasurer, which shall be submitted by said auditor to the board of commissioners at their next meeting, and if they find the same to be incorrect in any particular, they shall forthwith certify the facts in relation to the same to the state treasurer.

§ 1254. County treasurer's final settlement, how made. When the county treasurer goes out of office, he shall make a full and complete settlement with the board of commissioners, and deliver up all books, papers, moneys and all other property pertaining to the office to his successor, taking his receipt therefor. The board of commissioners shall make a statement so far as state dues are concerned to the state treasurer, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, showing to what year and to what account the amount so paid over belongs. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect. They shall witness and attest the actual transfer and delivery of accounts, books, vouchers and all funds by any outgoing treasurer to his successor in office, whether the treasurer is succeeded by himself or another; and they shall cause to be entered of record their full compliance with the requirements of this section.

ARTICLE 9.—TAX SALE.

§ 1255. Sale of real property. Notice. Manner. Costs and fees. The treasurer shall give notice of the sale of real property by publication thereof once a week for three consecutive weeks preceding the sale, in a newspaper in his county, to be designated by the board of county commissioners or a majority thereof, if there is one, and if there is no paper published in his county, shall give notice by a written or printed notice posted on the door of the court house or building in which courts are commonly held or the usual place of meeting of the county commissioners for three weeks previous to the sale. In counties having daily papers the tax list shall be published in one issue of the daily edition and in two issues of the weekly edition of the same paper, so selected by the board. Such notice shall contain a notification that all lands on which taxes are a lien, naming the year for which taxes are due and remaining unpaid will be sold, and time and place of sale, and said notice must contain a list of the lands to be sold, name of person to whom said property is assessed and the amount of taxes due. The treasurer shall charge and collect, in addition to the taxes, interest and penalty, the sum of twenty cents on each tract of real property and ten cents on each town lot advertised for sale, which sum shall be paid into the county treasury and the county shall allow and pay the costs of publication, on comple-

tion of the same, at the rate above provided; but in no case shall the county be liable for more than the amount charged to the delinquent lands and lots for advertising.

§ 1256. Real estate, when sold for taxes. On the first Monday of October of 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 for cash, 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 tax 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. § 62, c.28, Pol.C. am'd.

§ 1257. Highest bidder, who. Sale of homestead. 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 one-half or more of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided in such case lengthwise, by a parallel with the proper lines of the lots. If the portion taken is 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 lands, town lots or other real property, shall have been first sold, and to that end the quantity of the 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 mechanic's liens, for the ascertainment of the homestead; and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and to set the same apart from the homestead. § 63, c.28, Pol.C.

§ 1258. Private sale, when. Readvertisement. Civil action. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed; and, if it has closed, he may sell the same at private sale, or 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. § 64 c.28, Pol.C. am'd.

§ 1259. Report of sale and evidence thereof. On or before the first Monday of November following the sale of real property the treasurer is required to file in the office of the county auditor of his county a return of his sale of land, town lots, mines and mining claims, retaining a copy in his office, showing the lands sold, the name of the purchasers and the sums paid by them, and also a copy of the notice of sale, with a certificate of the advertisement, verified by an affidavit, and such certificate shall be evidence of the regularity of the proceeding. § 65, c.28, Pol.C. am'd.

§ 66, c.28, Pol.C.
am'd.

§ 1260. Description of real estate. The description of real estate in such returns shall be entered in the same numerical order as required in the tax list.

§ 67, c.28, Pol.C.
am'd.

§ 1261. Tax certificate, by whom executed. Effect and form. The purchaser of any tract of land sold by the county treasurer for taxes will be entitled to a certificate in writing, describing the lands so purchased, the sum paid and the time when the purchaser will be entitled to a deed, which certificate shall be assignable, and said assignment must be acknowledged before some officer having power to take acknowledgment of deeds. Such certificate shall be signed by the treasurer in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. And the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in any other case, and shall write thereon, "sold for taxes at public sale." The purchaser acquires the lien of the tax on the land, and if he subsequently pays any taxes levied on the same, he shall have the same lien for them, and may add them to the amount paid by him in the purchase; but no such subsequent tax shall be paid by the purchaser until fifteen days before such tax becomes delinquent. Such certificate shall be substantially in the following form:

State of North Dakota, }
.....County. } ss.

I,, treasurer of the county of, in the state of North Dakota, do hereby certify that the following described real estate in said county and state, to-wit: (Describing the same) was, on the day of, 18..., duly sold by me in the manner provided by law for the delinquent taxes of the year 18... thereon, amounting to dollars, including interest and penalty thereon and the costs allowed by law to for the sum of dollars, he being the highest bidder for the same.

And I further certify that unless redemption is made of said real estate, in the manner provided by law, the said..... or his assigns will be entitled to a deed therefor, on and after the..... day of, A. D. 18..., on surrender of this certificate.

In witness whereof I have hereunto set my hand this day of, A. D. 18...

....., Treasurer.

§ 68, c.28, Pol.C.
am'd.

§ 1262. Fees for tax certificate. The treasurer is authorized to demand twenty-five cents for each certificate made by him on such sale, containing a description of more than a single tract of land as advertised, and the treasurer is authorized to demand the sum of twenty-five cents for each certificate describing a single tract of land. But any number of parcels of land, bought by any one person, may be included in one certificate, as may be desired by the purchaser; and whenever the treasurer makes a certificate to any land sold for taxes, he shall enter an account thereof in the sale book, opposite the description of the land conveyed.

§ 69, c.28, Pol.C.
am'd.

§ 1263. Private sale of unsold land. Certificate. After the sale shall have closed and after the treasurer has made his return thereof to the county auditor as provided in section 1259, if any real estate remains unsold for want of bidders therefor, the county treasurer is authorized and required to sell the same at private sale at his office, to any person who will pay the amount of the taxes, penalty

and costs thereon for the same, and to deliver to said purchaser a certificate as provided in section 1261, and to make out duplicate receipts for the taxes on such real estate, on which he shall write, "sold for taxes at private sale," 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; 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.

ARTICLE 10. — REDEMPTION.

§ 1264. Redemption, period of, how made. Interest. The owner or occupant of any land sold for taxes, or any other person may redeem the same at any time within two years after the day of such sale or at any time before the execution of a deed of conveyance therefor by the county treasurer, by paying the county treasurer, for the use of the purchaser, his heirs or assigns, the sum mentioned in this certificate, and interest thereon at the rate of fifteen per cent per annum from the date of purchase, together with all other taxes paid 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 subject to the order of the purchaser, his agent or attorney, who shall be immediately notified of such redemption by the treasurer, if his residence is known; provided, that infants, idiots and insane persons may redeem any lands belonging to them, sold for taxes, within one year after the expiration of such disability. And provided, further, that when any person shall redeem any lands or lots sold for taxes and shall not demand a redemption receipt for the money paid the return of the certificate of purchase for cancellation shall operate as a release of all the claim 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 had been issued, "sale canceled by return of certificate." The fee for making said entry shall be ten cents for each description. § 70, c. 28, Pol. C. am'd.

§ 1265. Redemption of undivided land, how made. Any person claiming an undivided part of any land sold for taxes may redeem the same on paying such proportion of the purchase money, interest, principal and subsequent taxes as he shall claim of the land sold. § 71, c. 28, Pol. C.

§ 1266. Partial redemption, how made. In every case of partial redemption, pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption and the county treasurer shall convey accordingly. § 72, c. 28, Pol. C.

ARTICLE 11. — DEED AND EFFECT THEREOF.

§ 1267. Tax deed, when and by whom made. If no person shall redeem such lands within two years, at any time after the expiration thereof, and on production of the certificate of purchase the treasurer of the county in which the sale of such lands took place, § 73, c. 28, Pol. C.

shall execute to the purchaser, his heirs or assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in the grantee an absolute estate in fee simple in such land, subject, however, to all the claims which the state may have thereon for taxes or other liens or incumbrances.

§ 74, c. 28, Pol. C.
am'd.

§ 1268. Treasurer to execute deed. Form of tax deed.

Such deeds shall be executed by the county treasurer under his hand, and the execution thereof shall be attested by the county auditor with the county seal, and such deed shall be conclusive evidence of the truth of all the facts therein recited, and of the regularity of all the proceedings from the assessment and 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 18 produce to the undersigned C. D., treasurer of the county of, in the state of North 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 county treasurer's office in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to for the sum of dollars, being the amount due on the following tract or lot of land returned delinquent for the nonpayment of taxes, costs and charges for the year (or years) 18 to-wit: (Here insert the land offered for sale.) And it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and the same not having been redeemed as provided by law, and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, charges and costs as above specified, and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year (or years) 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 of 18 between the state of North Dakota by C. D., as 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, has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said party of the second part heirs, and assigns forever, the tract or parcel of land mentioned in said certificate, and described as follows, to-wit: (Describe the land), to have and to hold said mentioned tract or parcel of land with the appurtenances thereto belonging to the said party of the second part heirs and assigns forever, in as full and ample manner as the said treasurer of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., as 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 acknowledgements of deeds, for which said deed the treasurer shall be entitled to charge a fee of fifty cents, to be paid by the grantee in such deed.

§ 1269. Limitation of action to set aside tax deed. Conditions precedent. No action shall be commenced by the former owner or owners of land, or by any person claiming under him or them, to recover possession of land which has been sold and conveyed by deed for nonpayment 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 penalty, costs and expenses shall be paid or deposited in court by the parties commencing such action. § 75, c.28, Pol.C

§ 1270. Irregularities not to invalidate deed in certain cases. The sale of lands, town or city lots, or any other real property, for taxes, 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 of 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. § 76, c.28, Pol.C.

§ 1271. Tax certificates canceled, when. Lost certificates and procedure. When deeds are delivered for real property sold for taxes the certificate therefor must be canceled and filed 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 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. § 77, c.28, Pol.C.

ARTICLE 12. — SALES WRONGFULLY MADE.

§ 1272. County to refund, when. When by mistake or wrongful act of the treasurer or other officer, 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 the principal, or the purchaser may recover the same directly from such officer and his sureties. In case any county shall have heretofore paid or shall hereafter pay to the state or any town, city, township or other corporation, moneys collected by mistake or wrongful act of the treasurer, or any other officer, the same shall be refunded to the treasury of the county from which the same was received, upon demand of the treasurer of such county. § 78, c.28, Pol.C. am'd.

§ 1273. Action to restrain or avoid tax. Judgment for taxes justly due. Whenever any action or proceeding shall be commenced and maintained before any court or judge to prevent or restrain the collection of any tax or part thereof, or any particular act of an 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, § 79, c.28, Pol.C.

or by such person, must be ascertained and judgment rendered and given therefor against the taxpayer, and if the tax is delinquent, execution must be issued forthwith for the same.

ARTICLE 13. — COLLECTION OF TAXES BY ACTION.

§ 1274. Action to collect taxes, when. Sixty days after the annual tax sale has closed, if any real property remains unsold for want of bidders therefor, on which any tax remains unpaid, the county commissioners are hereby authorized and empowered, at their option, in lieu of the private sale provided by section 1258, to authorize and empower the county treasurer to institute a civil action in the district court of his county or subdivision, in his own name as treasurer of his county, for the collection of such taxes from the party or parties liable therefor against the real property chargeable therewith. In such action the treasurer shall include taxes remaining unpaid and delinquent for any previous year or years and all delinquent taxes for whatever year, against whomsoever assessed, which are a lien upon the real property sought to be charged in the action, and can properly be united in the same action.

§ 1275. Action by treasurer to recover taxes, who parties. When the real property appears assessed against any owner, or the title of a subsequent owner of such property appears of record, the treasurer may bring an action against either or both at his option, and in cases where the property appears assessed to an unknown owner and the title of no subsequent owner appears of record, he may bring an action against an unknown owner, and all persons having an interest in the property shall be presumed to have notice of such action, and the proceedings therein.

§ 1276. Commenced by summons. Service of. This action shall be begun by service of a summons in like manner as in other civil actions; and in the case of a nonresident and of unknown defendants, service of the summons shall be made by publication upon the same proceedings and in like manner as is provided in the code of civil procedure for nonresidents and unknown defendants having or claiming an interest in or a lien upon real property.

§ 1277. Costs as in civil actions. In every judgment recovered under this chapter the same costs shall be taxable as in ordinary civil actions; provided, however, that no costs shall be demanded of or payable by the treasurer of the county in advance, but shall be payable when collected by the treasurer.

§ 1278. Complaint, form of. In this action brought by the treasurer the complaint may be in the following form, and shall be legally sufficient:

..... Court.
 Plaintiff, }
 vs.
 Defendant. }

The plaintiff complains and alleges that the defendant is indebted to the plaintiff in the sum of dollars, (naming the total amount due the state, county and other funds) for taxes, with per cent penalty added thereto for the nonpayment thereof, and interest thereon at the rate of per cent per month, from (date of delinquency) and cents costs of advertising, which said taxes were duly assessed and levied upon the (real or personal) prop-

erty of the defendant, to-wit: (Describe the property as assessed) for the fiscal year (naming the year) (for taxes for a previous year an additional paragraph may be added in similar form). That the taxes aforesaid, with penalty, interest and costs are a lien upon the real property before described.

Wherefore, plaintiff prays judgment against said defendant for the sum of dollars, with penalty and interest as aforesaid, and attorney's fees of dollars and costs of suit, and that the lien of said taxes may be enforced against said real property, and the same be condemned to be sold to satisfy plaintiff's judgment.

..... State's Attorney.

In case of an unknown owner, or of personal tax, chargeable as a lien on real property, or where the defendant is sued in a representative capacity, or in other cases, presenting peculiar circumstances, the complaint shall contain such additional allegations as such circumstances may require.

§ 1279. Certificate prima facie evidence. Form. On the trial of any action brought under this chapter, a certificate in the following form, signed by the treasurer and under the seal of the county, shall be prima facie evidence of the due assessment and levy of the tax, and that it is due and delinquent:

I do hereby certify that the following is a correct transcript of an entry on the duplicate tax list of county, now in my hands for collection (name, description of real property, personalty, tax to different funds, total, remarks). That the above tax became delinquent on (date), has since been advertised for sale at a cost of dollars and not sold for want of bidders, and remains unpaid.

..... Treasurer.

§ 1280. Rules and practice governing. These actions shall be governed by the rules and practice of the code of civil procedure, and judgment may be taken as in such code provided, either in term time or vacation. When issue is joined, the cause shall at once on request of the plaintiff be placed by the clerk on the calendar for trial without serving or filing a note of issue or notice of trial; and shall be given precedence in the district court next after criminal business. Such issue shall be triable by the court, subject to its power to send any or all of the issues to be tried to a jury, as provided in the code of civil procedure.

§ 1281. Payment after suit commenced. Upon the payment of any taxes after suit shall have been brought, or the payment or collection thereof after judgment, the treasurer shall pay therefrom the costs and attorney's fees, and make distribution of the balance as provided by law.

§ 1282. Interest on judgments. All judgments obtained under the provisions of this chapter shall bear interest at the rate of twelve per cent per annum until paid.

§ 1283. Execution to enforce judgment. Proceedings. Redemption. Upon the recovery of judgment in any case brought under this chapter, the same may be enforced by writ of execution in like manner as provided in the code of civil procedure in cases of judgment requiring the sale of property, and the proceeding throughout shall be the same as in such cases, except that in all cases arising under this chapter, execution shall be directed to the treasurer of the county in which the property to be sold is situated instead of the

sheriff. And the treasurer shall discharge the duties in and about the receipt of said execution, the advertisement and sale of the real property, directed to be sold thereunder, the conduct of the sale, the execution of the certificate of purchase, return of execution and report of sale, and any other duties now required of the sheriff in the sale of real property on execution, in the same manner as the same are required by law to be performed and discharged by the sheriff in the case of sales of real property by him, under writs of execution requiring the sale of real property, the proceedings of the treasurer in the premises to be reported to the court upon return of the execution, and to be subject to review and confirmation by the court, in like manner as a sheriff's sale of real property on execution. The premises sold by the treasurer shall be subject to redemption at any time within two years from the date of sale or at any time before the execution of a deed therefor, in like manner and upon the same terms and conditions as provided on ordinary sales of real property; provided, however, that during the period allowed for redemption and until redemption is made, the treasurer's certificate of purchase and all taxes paid by the purchaser subsequent thereto shall bear interest at the rate of fifteen per cent per annum, when the amount is less than five dollars, and twelve per cent when the amount is more than five dollars.

§ 1284. Sale under execution. Highest bidder defined.

In any sale upon writ of execution, under this chapter, the person who offers to pay the amount due on any parcel of land for the smallest portion of the same is considered the highest bidder, such portion to be chosen in like manner as provided for sales made by the treasurer under ordinary tax sales in section 1257.

§ 1285. No bidders. County to purchase. Certificate. Taxes remitted, when. Reassessment. If, in any instance, there should be no bidders willing to give the full amount of the judgment, penalty, interest and costs for any real property advertised and offered for sale, then it shall be the duty of the treasurer to bid off such real property in the name of the county of which he is treasurer, as the board of county commissioners thereof may authorize and direct, for the amount of the judgment, interest and costs accrued, and a certificate shall issue to such county in like manner as to any other purchaser; provided, however, that no costs or treasurer's commissions shall be payable by the county until redemption is made from such sale, or the time for redemption has expired; and provided, further, that all lands bid off by the treasurer for the county, shall, during the period of redemption, be subject to assessment and the levy of taxes the same as real property of private persons. But the taxes levied thereon during said period shall not be payable by the county, and if the said lands are not redeemed and a deed or deeds executed to the county therefor, said taxes shall be remitted and canceled of record in the treasurer's office by direction of the board of county commissioners.

§ 1286. Tax deed upon execution, when issued. At the expiration of the time allowed for redemption, if no redemption shall have been made, the treasurer must make the purchaser, or the party entitled thereto, a deed of the real property sold, which deed shall be in the usual form of deeds made by the sheriff after a sale under a writ of execution on a judgment directing the sale of real property, and shall have the same force and effect.

§ 1287. Tax sale. Treasurer's fees. For his services in attending and conducting any sale under judgment in the district court the treasurer shall be allowed the following fees:

For advertising and attending sale, and returning execution, fifty cents.

For executing certificate of purchase, fifty cents.

For executing deed, fifty cents.

The last item to be paid by the grantee in the deed, the other items to be taxed as accrued costs in making the sale.

1288. Purchaser may pay subsequent taxes. Redemption therefrom. The purchaser at any sale aforesaid, or his assignee, may pay any tax becoming delinquent before redemption from his purchase has been made, and thereafter no redemption can be made from him without paying the amount due on his certificate of purchase, with interest at fifteen per cent per annum from the date thereof, and such other liens held by him as are now required to be paid in making redemption from an ordinary execution sale and in addition thereto the amount of such subsequent tax paid by him, with interest from the date of the payment thereof at the rate of fifteen per cent per annum.

§ 1289. Limitation of action to impeach execution deeds. The same limitations shall apply to the bringing of an action to impeach any deed made under the provisions of this chapter, and the same prerequisites be enforced against the party bringing such an action as in the case of deeds executed by the treasurer on an ordinary tax sale made by him as provided in section 1269.

§ 1290. Defenses to actions, what admissible. In actions brought under the provisions of this chapter, it shall be no defense thereto that the land described has not been offered at the tax sale, or that a public tax sale for any year has not been held, or that there were irregularities in the conduct of the sale or advertisement thereof, or in the assessment or levy of the tax; nor shall any defense be admissible or any relief granted against the tax sought to be enforced, except such as may have been heretofore permitted under the existing revenue laws of the state.

ARTICLE 14. — PEDDLERS' TAX.

§ 1291. State license for peddlers. Fee. A tax of fifty dollars for state purposes shall be levied upon each peddler of watches, clocks, jewelry or patent medicines, and all other wares and merchandise not manufactured within the limits of this state, for a license to peddle throughout the state for one year. § 80, c. 28, Pol. C.
am'd.

§ 1292. License, from whom obtained. Such license may be obtained from the county auditor of any county, upon paying the proper tax to the treasurer thereof and taking his receipt therefor. § 81, c. 28, Pol. C.

§ 1293. Peddling without license. Penalty. Failure to exhibit license. Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable, whether he is the owner or not, and upon conviction thereof, shall forfeit and pay the sum of fifty dollars to the county treasurer where such conviction shall be had, to be recovered by civil action in the name of the county prosecuting for the same. All fines and penalties recovered under this section shall be applied to the common school fund of the county prosecuting for the same, and if any peddler refuses § 82, c. 28, Pol. C.
am'd.

to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produces a license upon the trial, such peddler shall pay all costs of prosecution.

ARTICLE 15.--PAYMENT OF STATE FUNDS BY COUNTY TREASURER.

§ 83, c. 28, Pol. C.
am'd.

§ 1294. County treasurer settles with state, when. Funds, how transmitted. The treasurers of the several counties shall pay into the state treasury all funds in their hands belonging thereto, on or before the fifteenth day of July, or on the fifteenth day of January in each year, and at such times as the state treasurer may require. State funds may be transmitted either by express, draft or post office order at the risk of the county treasurer, for which the county treasurer, shall be allowed his actual expenses. If by express it must be in coin, United States treasury notes or national bank currency.

§ 84, c. 28, Pol. C.
am'd.

§ 1295. Penalty for failure to settle with state. Proceedings. If any county treasurer shall willfully and negligently fail to settle with the state treasurer at the times and in the manner 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 the name of the state, 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.

§ 85, c. 28, Pol. C.
am'd.

§ 1296. List of taxable lands, how procured. Disposition of. A list of lands becoming taxable for the first time in each county of the state shall be procured by the state auditor from the proper land officers, at the best prices for the state, and a list of the lands becoming so taxable in each of the several counties shall be forwarded by the auditor to the county auditor of each county on or before the fifteenth day of March of each year.

ARTICLE 16.—TREASURER'S WARRANT BOOK.

§ 86, c. 28, Pol. C.
am'd.

§ 1297. Treasurer to keep warrant book. Form of. Each county treasurer is required to keep a book called a "warrant book," in which he shall enter every county, road or other warrant or order paid by him, or received in payment of road or poll 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 the total amount for which it was received; and the treasurer shall keep his account of road warrants, receipts and orders by him received for and on account of taxes, separate and distinct from the warrants paid by him in cash, and in another and separate place he shall enter an account of all indorsements made on road warrants or orders in part payment thereof. Such warrant book shall be in the following form, to wit:

TREASURER'S WARRANT BOOK COUNTY, N. D.

Date.	From What Received.	Payee of Warrant.	Number of Warrant.	Date of—Amount—Warrant.	Indorsement.	Receipts.	Interest.

§ 1298. **Warrants, order of payment.** All warrants upon the state treasurer, the treasurer of any county, or any municipal corporation therein, shall be paid in the order of their presentation therefor. § 1, c. 50, Pol. C. am'd.

§ 1299. **Warrant register, by whom kept. Form of.** The state treasurer and the 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 and registered 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 in whose name the same is registered, and subsequent assignees, if furnished therewith, 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. § 2, c. 50, Pol. C. am'd.

§ 1300. **Duty of treasurer to register for payment.** It shall be the duty of every such treasurer to enter such warrant in his warrant register for payment in the order of presentation for registration, and upon every warrant so registered he shall indorse "registered for payment," with the date of such registration, and shall sign such indorsement; provided, that nothing in this chapter shall be construed to require the holder of any warrant to register the same, unless on presentation of the same to the treasurer for payment it shall be indorsed by him, "not paid for want of funds," and when so indorsed and registered it shall draw interest at seven per cent per annum from the date of such indorsement, but not otherwise. § 3, c. 50, Pol. C. am'd.

§ 1301. **Duty of treasurer to notify holders of warrants.** When the treasurer shall have received money belonging to any particular fund sufficient to pay the warrant against such fund, which by his warrant register appears to be next due and payable, such treasurer shall by mail immediately notify the person in whose name the same is registered, or his assignee, if notified of the assignment, and interest upon such warrant shall immediately cease. § 1, c. 140, 1881. am'd.

§ 1302. **Cash book and register to be footed and closed annually.** 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. § 5, c. 50, Pol. C.

§ 1303. **Failure to enter and foot cash book, penalty.** 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 chapter, for the space of § 6, c. 50, Pol. C.

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.

§ 7, c. 50, Pol. C. § 1304. **Cash book and register open to inspection.** 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.

§ 9, c. 50, Pol. C. § 1305. **Failure to register warrants. Liability of treasurer.** 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.

ARTICLE 17. — MISCELLANEOUS PROVISIONS.

§ 87, c. 28, Pol. C.
am'd. § 1306. **False tax receipts, delivery of, a felony.** If any treasurer or his deputy or any other person shall knowingly or willfully make, issue and deliver any tax receipt or duplicate tax receipt, and therein designate any part or parts of the amount thereof as being paid in road 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 felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than five years.

§ 89, c. 28, Pol. C.
am'd. § 1307. **Fraudulent tax receipts, delivery of, a felony.** If any treasurer or his deputy or any person shall knowingly or willfully make, issue and deliver any tax receipt or duplicate tax receipt, required by this chapter to be issued; by fraudulently making the tax receipt and its duplicate, or the paper purporting to be its duplicate differ from each other, with intent to defraud the state of North Dakota, or any county in said state, or any person whomsoever, such treasurer or deputy treasurer or other person shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than five years.

§ 89, c. 28, Pol. C.
am'd. § 1308. **Dereliction of duty, penalty for.** 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 chapter, in any county, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in such county, on receiving satisfactory evidence of such dereliction or failure to perform, as required by law, any duty enjoined by this chapter, shall refuse to pay such person or persons any sum whatever for such services.

§ 90, c. 28, Pol. C.
am'd. § 1309. **Treasurer to make duplicate receipts for all money.** When any money shall be paid to the county treasurer, or any account other than taxes, he shall make the proper duplicate receipts for the same as in 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 auditor as directed in this chapter.

§ 91, c. 28, Pol. C.
am'd. § 1310. **Redemption of warrants. Duty of treasurer.** When the county treasurer shall redeem any county warrants, or shall receive any road warrants in payment of taxes, on which any interest

is due, he shall note on such warrants or orders the amount of interest paid by him thereon, and shall enter in his accounts the amount of such interest distinct from the principal.

§ 1311. Treasurer to mark warrants "redeemed," when. § 92, c. 23, Pol.C.
am'd.
When the county treasurer of any county shall pay any warrants drawn on him by the board of county commissioners, or when he shall take or receive any warrant, or receipt in payment for any tax, he shall write on the face of each warrant, order or receipt, "redeemed," and the date of redemption, and shall sign his name thereto.

§ 1312. Indorsements of road fund warrants. § 93, c. 23, Pol.C.
am'd.
When any person desiring to pay any taxes due and unpaid, shall present a warrant on the road fund of his road district, in payment for such taxes as it may be applied to, which shall exceed the amount that the treasurer is authorized to receive in such warrants in payment for such taxes, the treasurer shall indorse on the back of such warrant 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 thereof for the amount so indorsed and paid, showing the date of the indorsement, a full description of such warrant, including the date thereof, to whom issued, the amount for which it was given, and all the indorsements, including registration, if registered; one of which receipts he shall, on the day received, file with the county auditor, and the other he shall retain as his voucher.

§ 1313. Partial payment of taxes. How made. § 94, c. 23, Pol.C.
am'd.
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 will be permitted to pay one of said taxes without paying the others, except taxes, the collection of which shall have been enjoined by law.

§ 1314. County auditor to sue treasurer, when. § 95, c. 23, Pol.C.
am'd.
If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county auditor on receiving instructions for that purpose from the state auditor, or from the board of county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties, or any of them.

§ 1315. Suit against delinquent treasurer. Commissioners may remove, when. § 96, c. 23, Pol.C.
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 provided by law.

§ 1316. Additional bond may be required, when. § 97, c. 23, Pol.C.
am'd.
The board of county commissioners of any county may require the treasurer to give an additional bond, whenever in the opinion of a majority of said commissioners the existing security shall have become insufficient; and the commissioners are 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; but the giving of such additional bond

or bonds, as provided in this section, shall not invalidate any previous bond or bonds, nor discharge the sureties from any liability thereon.

§ 98, c.28, Pol.C. **§ 1317. Failure to give additional bond, vacates office.** If any county treasurer shall fail or refuse to give such additional 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.

§ 99, c.28, Pol.C. am'd. **§ 1318. Treasurer not to speculate in county warrants. Penalty for.** No county treasurer shall either directly or indirectly contract for or purchase any warrant or warrants, or other evidence of indebtedness issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant or warrants, or other evidence of indebtedness issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant or warrants, or other evidence of indebtedness; and if any county treasurer shall so contract for or purchase any warrant or warrants, or other evidence of indebtedness, he shall not be allowed, in settlement, the amount of said warrant or warrants or other evidence of indebtedness, or any part thereof, and shall also forfeit the whole amount due on such warrants or evidence of indebtedness, to be recovered by civil action at the suit of the state of North Dakota, for the use of the county.

§ 100, c.28, Pol.C. am'd. **§ 1319. Treasurer not credited with interest paid, when.** The county treasurer, on his settlement with the county commissioners, shall not be credited with any sum for interest paid on any warrant or order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon.

§ 101, c.28, Pol.C. **§ 1320. Loaning county funds. Penalty for.** If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own purposes, 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 an action at law, at the suit of the state of North Dakota, for the use of the county.

§ 102, c.28, Pol.C. **§ 1321. Treasurer to disburse funds quarterly.** Each county treasurer shall, immediately after each quarterly settlement with the county commissioners of his county, on demand and presentation of the order of the auditor, 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, town, city or school district; provided, that the moneys mentioned in this section may, by the direction of the proper local officers, remain in the county treasury on the order of the county auditor aforesaid.

§ 103, c.28, Pol.C. am'd. **§ 1322. Auditor and treasurer jointly to make annual statement.** The county auditor and county treasurer conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year, also the assets and liabilities at the time of making out the same. Said exhibit shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed and on what account; and also the liabilities of the county stated in detail, and the assets of every kind, as near as may be; showing also the amount of funds in the treasury at the time of making said exhibit; on what account paid in and the kind of

funds. Said exhibit shall be made out annually up to and including the thirty-first day of December, and filed with the county auditor, and a copy posted up on the same day in the office of the treasurer.

§ 1323. **Misappropriation of public funds. Penalty.** If any county treasurer or other officer or person charged with the collection, receipt, safe-keeping, transfer or disbursement of public moneys or securities, or any part thereof belonging to the state or any county, precinct, district, city, town or school district shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever, such public moneys or securities or any portion thereof, or shall use the same or any portion thereof by way of investment in any kind of securities, stocks, loans, property, land and merchandise, or in any form whatever not authorized by law, or shall loan the same or any portion thereof 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 moneys or securities as aforesaid as shall be thus converted, used, invested, loaned, or paid out as aforesaid, and upon conviction thereof, such county treasurer or other officer or person, shall be punished by imprisonment in the penitentiary for a term of not less than one year, nor more than twenty-one years according to the magnitude of the embezzlement, and also pay a fine equal to double the amount of money or other property so embezzled as aforesaid; which fine shall operate as a judgment at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process for the use of the state, county, precinct, district, town, city or school district, whose moneys or securities have been so embezzled.

§ 104, c. 28, Pol. C.
am'd.

§ 1324. **Extraordinary expenditures to be authorized by 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 the official newspaper of 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 authorize 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 special tax.

§ 105, c. 28, Pol. C.
am'd.

§ 1325. **Payment of taxes requisite to record deed, mortgage or transfer.** No deed, mortgage, deed of trust, or other incumbrance or transfer of real property shall be received, filed or recorded by the register of deeds until all delinquent taxes due upon the real estate in such instruments described shall have been paid, which payment shall be evidenced by the indorsement of the county treasurer to that effect on the instrument presented for filing or record.

§ 1, c. 113, 1893.
am'd.

§ 1326. **State board of equalization, meeting of for classification and values.** It shall be the duty of the state board of equalization, as by this chapter constituted, to hold a session on the third Monday in January of each year, for the purpose of classifying all live stock and fixing an approximate cash value on the same, in order to secure uniformity and equity in the assessment thereof, and it shall be the duty of said board to transmit to each county auditor

on or before the third Monday of February following, a sufficient number of printed slips to supply all assessors, containing said classification and values affixed, which shall be distributed by said county auditor to the various assessors of their respective counties at the same time the blanks are furnished, as provided in sections 1179 and 1180 for their guidance and direction in listing and assessing all live stock.

§ 1327. Expenses of state board, how paid. All expenses incurred by said board in the discharge of the duties imposed by the last section, shall be audited and paid by the state.

§ 1328. Assessors to follow values fixed by state board. Penalty. It shall be the duty of each and every assessor, in determining and fixing the valuation of live stock listed by him for taxation, to be guided by and follow substantially the values thereof, as fixed by the state board of equalization, and if any assessor shall willfully fail or refuse so to do, he shall be deemed guilty of a misdemeanor, and upon conviction thereof he shall be punished as provided in section 1330.

§ 1329. Acceptance of unsworn list, forfeiture for. If any person shall receive and accept the list of any person not made, sworn to or affirmed and perfected in the manner hereby prescribed, he shall for each list so received and accepted by him contrary to this chapter, forfeit the sum of twenty-five dollars, to be deducted from his compensation by the county commissioners, or to be collected by suit brought against his official bond.

§ 1330. Assessed valuation not to be materially changed. Penalty. If any board of county commissioners, when engaged in equalizing and correcting the assessment roll of its county, as provided in section 1213, shall materially change the aggregate assessed valuation of such county, or shall equalize such assessment by increasing the aggregate assessed valuation of one class of property, as classified in section 1215, and reducing that of another class, or shall materially change the valuation of live stock as fixed by the state board of equalization, such commissioners and each of them consenting and assenting thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period of not more than one year, and not less than ninety days, or by a fine not exceeding one thousand dollars, and not less than two hundred dollars, or by such fine and imprisonment, and shall be deposed from the office of county commissioner.

ARTICLE 18. — ASSESSMENT OF RAILROAD PROPERTY.

§ 1331. Railroad property to be assessed by state board of equalization. The state board of equalization shall, at its annual meeting in August in each year, assess at its actual value the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state. To enable said board to make a correct valuation of such property, it shall have access to all reports, estimates and surveys of such lines of railroads as may be on file in the office of the commissioners of railroads, and shall have power to summon and compel the attendance of witnesses, and may examine such witnesses under oath in any matter relating to the value of such property. In estimating the value of each railroad, branches and side tracks thereof it shall be governed by the same rules as are provided for the govern-

ment of county and township assessors, in valuing other property in this state. It shall cause a record to be made of the estimated value placed upon each of the items set forth in this section which go to make the aggregate valuation of such assessments.

§ 1332. Apportionment to counties according to mileage. § 2, c. 135, 1890.

The board of equalization shall divide the valuation so found and determined of each continuous line by the number of miles of such line contained in the state, and the result shall be the valuation per mile for which said line shall be assessed. The value of each branch line shall be determined in the same manner, and such valuation per mile shall be apportioned to each county according to the number of miles of such line or branch line contained in such county.

§ 1333. Mileage and valuation, how certified to various political subdivisions for taxation. § 3, c. 135, 1890.

The state auditor shall at the time of certifying the equalized value of each organized county to the county auditor, also certify the number of miles of each main line of railroad, and branches and side tracks thereof contained in said county and the valuation per mile of such line or branch line as determined by the state board of equalization and the county auditor of such county shall apportion such valuation to the cities, towns, townships and districts through which such railroads run according to the number of miles contained in each, as a part of the valuation of such city, town, township and district for the purpose of taxation, and the same shall be taxed as personal property is taxed in each county.

§ 1334. Taxation in unorganized counties. § 4, c. 135, 1890.

The valuation so apportioned to unorganized counties in this state shall be taxed for state purposes only; and such tax shall be levied annually by the state auditor at the same rate as other property is taxed for state purposes, and the state auditor shall notify each railroad company so taxed of the amount of such tax, on or before the first day of December in each year, and such tax must be paid to the state treasurer at the same time and subject to the same penalty as is prescribed by law for the collection of personal property taxes in organized counties, and the state treasurer shall have the same powers, and it shall be his duty to collect such tax in the same manner as county treasurers are authorized by law to collect personal property taxes.

§ 1335. When provisions of this article inoperative. § 5, c. 135, 1890.

If at any time the legislative assembly shall provide by law for the payment of a per cent of gross earnings by railroads as authorized by section 176 of the constitution of this state, then and during the time such law shall be in force the provisions of this article shall be inoperative.

ARTICLE 19. — ASSESSMENT AND TAXATION IN UNORGANIZED COUNTIES.

§ 1336. Taxes, how assessed and collected in unorganized counties. § 1, c. 140, 1890.
am'd.

Any property not exempt from taxation, which is situated or kept in any unorganized county in this state, shall be listed and assessed by an assessor to be appointed by the board of county commissioners of the organized county to which such unorganized county is attached for judicial purposes; and the taxes due and payable on property in such unorganized county, shall be paid to and collected by the treasurer of such unorganized county, but such property shall be assessed and taxed for state purposes only.

§ 2, c. 140, 1890.
§ 1, c. 112, 1893.

§ 1337. Equalization and levy. The board of county commissioners of the county to which such unorganized county is attached for judicial purposes shall, at the time and place it equalizes and corrects the assessment roll of its county, equalize and correct the assessment roll of such unorganized county, and at the time and place it makes its tax levy for county purposes, levy a tax upon the assessed property of such unorganized county, for state purposes only, in the same manner and form that it makes its levy for state purposes in its own county, and when the tax list is completed, the board of county commissioners shall attach to such tax list its warrant under its hand and official seal, in general terms requiring the county treasurer of such organized county to collect the tax therein levied according to law, and it shall require an additional bond from such county treasurer in such amount as it may deem necessary for the faithful discharge of his duties in collecting such tax, and it shall audit and allow the necessary expenses of the assessor, auditor and treasurer for the assessment and collection of such taxes, which shall be paid upon its warrant out of the taxes so assessed and collected.

§ 3, c. 140, 1890.
§ 2, c. 112, 1893.

§ 1338. Tax lists, how kept. The county auditor of the county to which such unorganized county is attached for judicial purposes shall prepare a tax list in duplicate, with the warrant of the county commissioners attached, and deliver the duplicate thereof to the county treasurer on or before the first day of November following the date of the levy for the current year, and such duplicate tax list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained. The original tax list shall be kept by such auditor as the property of such unorganized county.

§ 4, c. 140, 1890.

§ 1339. County treasurer to collect taxes. It shall be the duty of the county treasurer, upon receipt of the tax list aforesaid, to collect such tax in the same manner and form in which other taxes are collected, and he shall pay the warrants drawn by the county commissioners upon such tax for necessary expenses of assessing and collecting the same and remit the remainder of such tax to the state treasurer.

ARTICLE 20. — TAXATION OF BANKRUPT STOCKS.

§ 1, c. 141, 1890.
§ 1, c. 111, 1893.

§ 1340. Bankrupt stocks, etc., how assessed. All itinerant, transient or other merchants, salesmen or other persons, and all merchants or salesmen of bankrupt stocks of goods or merchandise, or of stocks of goods or merchandise claimed to have been injured by fire or otherwise, who shall bring into this state any stock of goods at any time after the annual assessment is made and returned, shall be liable to taxation upon such stock of goods and merchandise, and the assessor of the township or city, in which such goods or merchandise are offered for sale, shall immediately assess such stock at the same rate at which other merchandise of the same character has been assessed and forthwith return his assessment roll thereof, if an assessor in an incorporated city, to the city auditor, and if not, then to the county auditor.

§ 2, c. 111, 1893.

§ 1341. Proceedings by city council. If such assessment roll is returned to the city auditor he shall immediately notify the mayor thereof, who shall thereupon call a meeting of the city council for the purpose of equalizing or correcting such assessment.

Such meeting shall be held not less than three nor more than ten days after the return of such assessment, and not less than twenty-four hours' notice of the time and place and purpose of such meeting shall be given to the owner of such stock, which notice must be in writing and may be served personally or by leaving a copy thereof with any person in charge of such stock or employed in selling the same. The city council shall at such meeting hear any complaint as to the assessment of such stock and equalize and assess the same, and may adjourn from day to day until the same is completed. And in the absence of a quorum such meeting may be adjourned from day to day by the city auditor and upon the completion of such equalization the city auditor shall immediately certify such equalized assessment roll to the county auditor, who shall thereupon add such assessment to the tax list for the current year, and extend the taxes for such year thereon, and on the duplicate thereof, or if such duplicate has been delivered to the county treasurer, shall certify the same to such treasurer, who shall thereupon immediately, upon the receipt of such duplicate or certificate, demand such taxes and collect the same by distraint and sale in default of payment thereof on demand.

§ 1342. Assessment by township assessor. If such assessment is made by a township assessor he shall return the same to the county auditor, who shall thereupon call a meeting of the board of county commissioners in the manner and within the time provided in the preceding section for calling a meeting of the city council, and thereupon the same proceedings shall be had by the board of county commissioners for the equalization of such assessment, and the same notice given of such equalization as provided in such section, and upon the equalization thereof the county auditor shall enter such assessment on the tax list as provided in said section, and the same proceedings shall be had for the collection of such tax as therein provided. § 3, c. 111, 1893.

ARTICLE 21. — COUNTY COMMISSIONERS TO LEVY TAXES IN CERTAIN CASES.

§ 1343. Tax in incorporated towns and cities to be levied by the county commissioners, when. Whenever any incorporated city, town or village having an existing liability or indebtedness and authorized to levy taxes for the payment of the indebtedness for which such city, town or village may be liable fails or refuses to elect proper officers for the government of such city, town or village, it shall be the duty of the board of county commissioners of the county in which such city, town or village is located, upon a proper showing by any person having a legal or subsisting claim against such city, town or village, that there are no legal officers in such city, town or village authorized to levy a tax for the payment of such indebtedness, to levy a tax in the same manner and for the same purposes that the board of directors, trustees or city council would be authorized to levy the same for the payment of such indebtedness; and any person having a claim against such municipality shall have the same right to enforce the levy of such tax by the board of county commissioners that he would have had to compel such levy by the proper authorities of such city, town or village, had they been properly elected and qualified. § 1, c. 143, 1890.

ARTICLE 22.—GOPHER TAX.

§ 1, c. 144, 1890.

§ 1344. Tax of two mills may be levied for destruction of gophers. The board of county commissioners of any county in this state may, at the time fixed by law for the levy and assessment of taxes, levy a tax of not exceeding two mills on the dollar of the assessed valuation, upon all real estate in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of gophers in such county.

§ 2, c. 144, 1890.

§ 1345. Fund, how used. The fund provided to be raised in accordance with the preceding section shall be denominated the "gopher destruction fund," and shall be kept separate and distinct by the county treasurer, and shall be expended by and under the direction and control of the board of county commissioners at such time, and in such manner, as is by such board deemed best to secure the abatement and extinction of the gopher pest.

ARTICLE 23.—COMPROMISE OF DELINQUENT TAXES.

§ 1, c. 118, 1889.

§ 1346. Commissioners may compromise, when. Whenever taxes remain unpaid on any real estate and the property shall have been offered for sale as required by law two successive years, and received no purchaser on account of the depreciation in the value of such property or otherwise, the board of county commissioners of the county in which such property is situated shall have the power to compromise with the owners thereof, by abating a portion of the delinquent taxes and penalty on such property.

ARTICLE 24.—ADJUSTMENT OF DELINQUENT TAXES DUE THE STATE FROM COUNTIES.

§ 1, c. 102, 1891.

§ 1347. Commission to adjust delinquent taxes. The state auditor and state examiner are hereby created a commission to adjust and determine the amount of delinquent taxes due to the state from the several counties, and the accounts between the state and such counties shall be adjusted in accordance with such determination when approved by the governor.

§ 2, c. 102, 1891.

§ 1348. Statement of taxes charged. The state auditor shall furnish the board of county commissioners of each county with a statement showing the amount of state or territorial taxes charged to such county for each year preceding the fourth day of November, 1889; also, showing the amount received by the state treasurer on account of such year's taxes, and the balance still unpaid as shown by the books in his office; such statement shall also show the amount of abatements claimed and allowed, if any; also the amount of penalty and interest paid each year.

§ 3, c. 102, 1891.

§ 1349. Statement of unpaid taxes. It is the duty of the board of county commissioners of each county on receipt of such statement to prepare or cause to be prepared, at the expense of such county, a statement of the unpaid taxes for each of the years mentioned in the preceding section, showing the amount of unpaid personal property taxes, the amount of abatements remaining in the hands of the treasurer for collection or the amount stricken from the list under the provisions of any law heretofore in force; also showing the amount of

taxes on real property uncollected for each year, the amount of abatements or taxes refunded each year and the reasons therefor. Said statement shall be made on such forms and in such manner as may be prescribed by the commission and forwarded to the state auditor as soon as completed.

§ 1350. **Abatements, how allowed.** Upon the receipt of the statements provided for above, it shall be the duty of the commission carefully to compare the same with the accounts of the state treasurer now in the auditor's office, and if it is satisfied that the abatements claimed are just and reasonable, it may allow the same and the state auditor shall credit each county with such abatements and notify the county auditor of each county of the adjustment as so determined, and the amount due each fund in the county and each township, city or school district shall be determined and adjusted on the same basis. § 4, c. 102, 1891.

§ 1351. **Abatements allowed, for what reason.** Such commission shall also allow abatements on real property for the following reasons: On account of double assessments of property; on all lands assessed and taxed prior to the entry thereof according to the laws of the United States; on all lands when the taxes have been declared illegal by a court of competent jurisdiction. § 5, c. 102, 1897.

§ 1352. **Consolidated tax account.** When the true balance due from each county to the state shall have been determined, the state auditor shall open an account with each county, and charge the balance due for each year in one account to be known as the "consolidated tax account," and all taxes collected by the counties for the years so adjusted shall be credited to such account and may be reported as collections on account of the "consolidated tax account." § 6, c. 102, 1891.

§ 1353. **Discrepancies.** Whenever any material discrepancy shall be found to exist between the statements returned from the several counties and the account as shown by the books in the state auditor's office, the commission may, if it deems it necessary, either in person or by some one duly authorized by it, make an examination of the accounts and tax lists of such county and ascertain wherein the discrepancy lies, and make the adjustment in accordance with such examination; any expense necessarily incurred under the provisions of this section shall be paid out of the general fund of the state on proper vouchers approved by the governor. § 7, c. 102, 1891.

§ 1354. **Attorney general to enforce payment, when.** In the event of the refusal or neglect of any county to furnish the statement above required, such commission shall have power to have such statement made at the expense of the county, and in case of the refusal of any county to pay the expense so incurred, the attorney general shall proceed to enforce such payment according to law. § 8, c. 102, 1891.

ARTICLE 25.—PROTECTION OF PUBLIC CREDIT.

§ 1355. **Funding warrants, when issued.** The state treasurer, with the advice and consent of the governor and state auditor, is authorized and directed to pay all state warrants legally issued, that may have been or may hereafter be presented to him for payment; provided, that the money to pay the same can be obtained at a rate of interest not to exceed eight per cent; and the auditor is authorized and directed to issue funding warrants in lieu of the warrants so paid and the treasurer is authorized and directed

§ 2, c. 58, 1879.
§ 1, c. 113, 1891.
§ 1, c. 94, 1891.
am'd.

to apply all state funds by him received and not otherwise lawfully appropriated, to the payment and cancellation of the so-called funding warrants; provided, further, that nothing in this chapter shall authorize said treasurer, nor shall said auditor and governor consent to issue funding warrants in excess of eighty thousand dollars, nor shall they anticipate the needs of the state for a longer period than sixty days at any one time.

CHAPTER 19.

THE MILITIA.

§ 1, c. 86, 1891. **§ 1356. 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.

§ 2, c. 86, 1891. **§ 1357. Assessors to make list of persons.** It shall be the duty of the assessors in each assessor district in this state, when making the assessment, to make out a list containing the names of all persons in their respective districts liable to perform military duty, and file a copy of such list with the register of deeds in the county, to be by him kept as a matter of reference, and also to transmit to the secretary of state a copy to be by him kept as a matter of reference in his office, which copy shall be filed in the offices of the persons aforesaid on or before the first day of January in each year.

§ 3, c. 86, 1891. **§ 1358. When and how militia called into service.** The militia thus enrolled shall be subject to perform no active military duty, except in case of war, invasion, or to prevent invasion, riot or insurrection. In such case the commander in chief is 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; but 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, 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 who have declared their intention to become such.

§ 4, c. 86, 1891. **§ 1359. North Dakota National Guard, how composed.** The organized militia of the state shall be known as the North Dakota National Guard, and shall consist of one regiment of infantry, one adjutant general's department, one inspector and judge advocate department, one supply department, an engineer and ordnance department, a medical department and such staff officers as may be necessary; provided, that in the discretion of the governor, a battalion of artillery and one or more troops of cavalry may be organized, but only one company, battery or troop shall be organized in a county. This section shall not affect existing organizations.

§ 1360. Governor, commander in chief. Brigadier general may select aides-de-camp. The governor shall be the commander in chief of the militia, and may appoint as many aides-de-camp as he may deem necessary who shall have the rank of colonel. He shall have full power to appoint the adjutant general, inspector and judge advocate general, chief of supply, chief of engineers and ordnance, and officers of the medical department. He may at his discretion organize the North Dakota National Guard into a brigade, in which case he shall appoint a brigadier general to command the same. The brigadier general may select two aides-de-camp from the captains or lieutenants of the national guard. § 5, c. 86, 1891.

§ 1361. Commissions issued by governor. Tenor of. All commissions shall be issued by the governor, and no commissioned officer shall be removed from office except by sentence of court martial. § 6, c. 86, 1891.

§ 1362. How equipped and organized. May be increased, when. The troops of the line which are uniformed and equipped may at the discretion of the governor be organized into a brigade under the command of the brigadier general as 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 the existing organization, or form new brigades, regiments and companies as the exigencies of the service may require. § 7, c. 86, 1891.

§ 1363. Battalion of artillery, what to consist of. The battalion of artillery shall consist of two batteries of two guns each, one major, one assistant sergeant with the rank of captain, one adjutant and one commissary of supply, each of 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. § 8, c. 86, 1891.

§ 1364. Battery of artillery, what to consist of. 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, not less than twenty nor more than forty privates, except as the commander in chief may direct; provided that two troops are organized. § 9, c. 86, 1891.

§ 1365. Cavalry battalion, what to consist of. The battalion of cavalry shall consist of two troops, one major, one assistant sergeant 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. § 10, c. 86, 1891.

§ 1366. Cavalry troop, what to consist of. 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. § 11, c. 86, 1891.

§ 1367. Infantry regiments, what to consist of. Each regiment of infantry shall consist of ten companies, one colonel, one lieutenant colonel, one major, one surgeon with rank of major, one adjutant, one commissary of supply, one assistant surgeon and one chaplain, each with rank of captain, one sergeant major, one sergeant of supply, one hospital sergeant, one chief musician, one drum major, two color sergeants, and not more than twenty musicians; provided, that

in the discretion of the governor the number of companies may be increased to twelve, and the number of majors may be increased to three in case there shall be a twelve company organization.

§ 13. c. 86, 1891.

§ 1368. Infantry company, what to consist of. Each company of infantry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, four corporals, two musicians, and not less than twenty nor more than forty privates, except as the commander in chief may direct.

§ 14. c. 86, 1891.
am'd.

§ 1369. Commander in chief may discharge or consolidate, 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 be entitled to receive a certificate of discharge, showing length of service, which time shall be credited to them in case of re-entering the service.

§ 15. c. 86, 1891.

§ 1370. Who may enlist in North Dakota National Guard. All able-bodied men of good character and proper age may be enlisted in the national guard for a term of three years, and after the expiration of the first enlistment may re-enlist at any time thereafter for terms of one or more years, at their option. Any person having an honorable discharge from the regular or volunteer service of the United States, or militia of this state, may on enlisting in the national guard be credited with length of service as shown by such discharge, but no person over forty-five years of age shall be re-enlisted except with the approval of the surgeon, and no enlisted man shall leave one organization to join another unless he shall be duly transferred.

§ 16. c. 86, 1891.

§ 1371. Enlisted men entitled to discharge, when. Each officer and enlisted person shall be held as in the service until properly discharged; and each enlisted person 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.

§ 17. c. 86, 1891.

§ 1372. Officers and men may be transferred or discharged, when. Officers and men removing 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 a certificate of service furnished upon his own application, but any member of the national guard who moves away from the vicinity of his company or other permanent headquarters, or absents 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.

§ 18. c. 86, 1891.

§ 1373. Adjutant general's department. The adjutant general's department shall consist of one adjutant general with the rank of brigadier general.

§ 19. c. 86, 1891.

§ 1374. 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 issued 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 seal of his office shall be transferred to his successor in office, and all copies of papers or records in his office, duly certified and authenticated under such seal, shall be evidence in all cases in like manner as the originals. On the certificate of the adjutant general the state auditor is directed to draw his warrant on the state treasurer, to be paid from the general fund, for the expenses incurred in carrying out the provisions of this section.

§ 1375. Additional duties of adjutant general. 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 on account of 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 one thousand dollars per annum, 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 five hundred dollars per annum, shall be paid from the general fund by warrant drawn by the state auditor on the state treasurer, on the order of the governor. § 20, c. 36, 1891.

§ 1376. Inspector and judge advocate general's department. The inspector and judge advocate general's department shall consist of one inspector and judge advocate general, with the rank of colonel. He shall inspect each company, troop and department of the North Dakota National Guard at least once a year. He shall examine all officers as to their qualifications and fitness to fill the positions to which they have been elected or appointed, and all officers of such national guard shall hereafter, before being commissioned by the governor, procure a certificate from the inspector and judge advocate general certifying that such officer has passed a satisfactory examination, and is qualified and fit to fill the position to which he has been elected or appointed; but 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. He shall make a full report on or before the first day of December in each year to the commander in chief, upon the efficiency, discipline and general condition of each organization. He shall also perform such duties as judge advocate general as the commander in chief may direct. The inspector and judge advocate general shall receive his actual expenses and the sum of five dollars for each day actually on duty, and on the voucher of such officer, approved by the adjutant general and governor, the state auditor shall draw his warrant on the state treasurer, to be paid from the general fund; but the sum so paid shall not in any year exceed five hundred dollars. § 21, c. 36, 1891.

§ 1377. Supply department. The supply department shall consist of one chief of supply with the rank of colonel and two assistant commissaries of supply with the rank of major. The assistants shall be assigned to appropriate duties with the brigade. § 22, c. 36, 1891.

- § 23, c. 86, 1891. **§ 1378. Chief of supply. Bond and duties of.** The chief of supply shall give a bond to the state in the sum of ten thousand dollars with two sureties to be approved by the commander in chief, conditioned for the faithful discharge of his duties. He shall keep a just and true account of all expenses necessarily incurred in the military service of the state and such account shall be paid on the order and approval of the commander in chief. He shall purchase and distribute to the national guard 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, pay the officers and members of the national guard, furnish clothing, rations, tools, camp and garrison equipage, make contracts for and pay the rent for offices, armories, storehouses, camp grounds, and such other duties authorized by law, as he may be directed to perform by the orders of the commander in chief.
- § 24, c. 86, 1891. **§ 1379. Engineer and ordnance department.** The engineer and ordnance department shall consist of one chief of engineers and ordnance, with the rank of colonel, and one assistant with the rank of major.
- § 25, c. 86, 1891. **§ 1380. Duty of officers.** It shall be the duty of the officers of this department to provide arms, ammunition and equipments for the national guard, to inspect buildings, lay out camps, be inspectors of rifle practice, and to perform such other service as the commander in chief may direct.
- § 26, c. 86, 1891. **§ 1381. Medical department.** The medical department shall consist of one surgeon general with the rank of colonel, one medical purveyor with the rank of lieutenant colonel, and one apothecary and storekeeper with the rank of captain; but no person shall be appointed to this department or commissioned to similar duties in this line unless he is a graduate of some legally incorporated school of medicine.
- § 27, c. 86, 1891. **§ 1382. Duties of.** 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 perform such other service as the commander in chief may direct.
- § 28, c. 86, 1891. **§ 1383. Grades below the rank of field officer 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 deems it necessary.
- § 29, c. 86, 1891. **§ 1384. Rank determined by date of election or appointment.** 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 North 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 the date of the first commission.
- § 30, c. 86, 1891. **§ 1385. Commanding officers appoint their staff, how.** Commanding officers of regiments or battalions shall detail their staff officers from the officers or enlisted men of their command, and appoint the noncommissioned 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.

§ 1386. **Noncommissioned officers appointed, how.** Company, troop or battery commanders shall appoint noncommissioned 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. § 31, c. 86, 1891.

§ 1387. **Officers to take and subscribe oath.** Each officer, before entering upon the duties of his office, shall take and subscribe an oath of allegiance to the United States and to the state of North Dakota, which oath, duly executed, shall be filed in the office of the adjutant general. § 32, c. 86, 1891.

§ 1388. **Recruits to sign enlistment papers.** Each 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 North Dakota, and a resume of the duties to be performed. Such oath shall be taken before the troop, battery, company or battalion commanders, and when 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. § 33, c. 86, 1891.

§ 1389. **Officers and men 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, and 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. § 34, c. 86, 1891.

§ 1390. **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; but 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 that 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 shall govern in all cases not provided for by the laws of the state or the regulations and orders of the commander in chief. § 35, c. 86, 1891.

§ 1391. **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 is 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 chapter. Any officer who shall knowingly or willfully place or cause 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 who 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 § 37, c. 86, 1891.
am'd.

refused to do military duty for the six months immediately preceding the annual inspection, shall be deemed guilty of misdemeanor, and upon conviction shall be fined in a sum not less than fifty nor more than one hundred dollars, or may be cashiered.

§ 4. c. 80. 1895.

§ 1392. State military board. There shall be a military board, consisting of the inspector and judge advocate general ex officio, and two other members to be appointed by the commander in chief, who shall be commissioned officers of the North Dakota National Guard, one of whom shall belong to the cavalry battalion of said national guard, and who shall ex officio be members of the military staff of the commander in chief, and hold their office for two years, or until their successors are appointed, unless sooner removed for cause. The state military board shall constitute an advisory body to the commander in chief on all military interests of the state. They are further authorized and empowered to prepare and to promulgate all articles, rules and regulations for the government of the North Dakota National Guard, not inconsistent with the laws of the United States or of this state, and which articles, rules and regulations when approved by the commander in chief, shall be in force and by him filed in the office of the secretary of state. The state military board shall have full control and charge of the state encampment grounds on Rock Island, Ramsey county, North Dakota, and shall provide such plans for laying out and improving the same as they shall deem advisable, subject to the approval of the commander in chief.

§ 5. c. 80. 1895.

§ 1393. Compensation of the members of the board. The compensation of members of the state military board, while going to and from, and when in actual attendance at meetings of the board, shall be such as is prescribed by law for field duty and their actual subsistence and traveling expenses, and on the vouchers of these officers, approved by the adjutant general and governor, the auditor is directed to draw a warrant on the state treasurer, to be paid from the militia fund.

§ 38, c. 86. 1891.

§ 1394. Duty of each troop, battery and company 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. Such other exercises may be had as the members of such organization shall prescribe in their by-laws. Any officer or man absent from any compulsory drill or parade, shall be fined or punished as fixed by the regulations.

§ 39, c. 86. 1891.

§ 1395. Powers of commanding officer. The commanding officer at any parade, drill, muster or other rendezvous, may cause those under his command to perform any military duties 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 and may remove any other person who shall trespass upon 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 must be abated as nuisances.

§ 1396. **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 shall 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. § 40, c. 86, 1891.

§ 1397. **Officers and men, how warned.** For the purpose of warning the officers, noncommissioned officers and other enlisted men for any parade, encampment or place of rendezvous the commanding officer shall issue his orders to such number of noncommissioned officers as he may deem necessary, requiring them respectively to warn each person belonging to the organization to appear at the place of rendezvous in compliance with such order. Each noncommissioned officer, to whom such order shall be directed, shall warn each person whom he shall therein be required to warn by reading the order 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 noncommissioned officer, to his commanding officer, sworn to and certified, shall be evidence on the trial of any person returned as delinquent. In cases of riot, tumult, breaches of the peace and in aid of the civil authorities a verbal warning or order shall be sufficient. § 41, c. 86, 1891.

§ 1398. **When member excused.** The officer ordering a rendezvous of his command, may, upon good and sufficient grounds, excuse any member thereof from attendance at the same. § 42, c. 86, 1891.

§ 1399. **Power of commander in chief in case of public disturbance.** The commander in chief shall have power in case of insurrection, invasion or breaches of the peace, or imminent danger thereof to order into the active service of the state any or all of the national guard, militia or other military organizations of the state that he may deem necessary, and no member thereof, who shall be ordered out by proper authority for such duty shall be held answerable by any court, nor liable to civil prosecution for any acts done by him in the discharge of his lawful military duty on such occasion; and in such cases the forces called into service shall receive the same pay and allowance as is provided in section 1412. § 43, c. 86, 1891.

§ 1400. **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, 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 the 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 order shall receive the same pay and allowance § 44, c. 86, 1891.

as is provided in section 1412 and the amount of such pay and allowance shall be a portion of the county and city charges of such county or city from the state, to be levied and raised as other charges are levied and raised.

§ 45, c. 86, 1891.

§ 1401. Member of national guard deemed deserter, when. 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 produce a certificate of physical disability from a physician in good standing, shall be deemed a deserter and punished according to the rules and articles of war.

§ 46, c. 86, 1891.

§ 1402. Articles of War of United States adopted, when. The articles of war governing the army of the United States, so far as they are practicable and not incompatible herewith, are 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 case permit.

§ 47, c. 86, 1891.

§ 1403. 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 belongs. 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 shall be forwarded to be filed with the proceedings of the court in such case.

§ 48, c. 86, 1891.

§ 1404. Powers of courts-martial. Any court authorized by this chapter 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, to administer oaths to witnesses and to issue subpoenas for all witnesses that may be deemed necessary by the court. He may issue attachment for a witness, and all sheriffs and constables are required to execute any precept issued by such president or court for that purpose. The person attached for nonattendance shall pay the usual fees for such service, besides the penalty provided, unless he satisfies the court that his failure to attend was excusable. Each 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 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.

§ 49, c. 86, 1891.
am'd.

§ 1405. Power to punish for contempt. Any person behaving in a disrespectful manner, or using any insulting language in the presence of any military court or to a member thereof in open court, intending to disturb or impair the authority of such court, may be punished as 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 constable or marshal of such county or to 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. 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 the same manner and under the same rules as in cases of imprisonment for contempt in such courts.

§ 1406. Sheriff of county, marshal of court. A military court sitting in any county shall be attended by the sheriff of such county or some suitable person designated by him, who shall be the marshal of the court and perform the usual duties of such marshal, and execute any process lawfully issued by such court and perform all acts and duties by this chapter 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 to designate some one to appear as marshal of the court. § 50, c. 86, 1891.

§ 1407. Compensation of marshal. Conversion of money is embezzlement. Each marshal appointed for a military court, shall be paid two dollars for each day's attendance before the court, and his actual and necessary traveling expenses in serving subpoenas or executing any process of the court, the same to be paid on the certificate of the president of the court, certifying the number of days employed, and the other duties performed, and be paid in the same manner that other accounts of the state are paid; 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 offense. § 51, c. 86, 1891.
am'd.

§ 1408. 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 fines, together with the costs, out of the goods and chattels of the delinquent, sale thereof to be made as provided by law, and no property shall be exempt from the payment of such fines and penalties. In default of sufficient goods and chattels to satisfy the same, such sheriff, marshal or constable shall take the body of such delinquent and confine him in the county jail, and the jailer shall keep such delinquent closely confined without bail for two days for any fine or penalty not exceeding five dollars and one additional day for each dollar above that sum, unless such fine with the costs and jailer's fees is sooner paid; but no such imprisonment shall extend beyond ten days and the officer ordering the court may remit such fines and penalties. § 52, c. 86, 1891.
am'd.

§ 1409. Refusal or neglect to pay fine. Any member of the national guard fined by a general or other court-martial who shall § 53, c. 86, 1891.

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 for which he has served and such dismissal shall disqualify him from serving in the national guard for three years thereafter. For offenses against the by-laws, rules and regulations of any organization any dues may be collected by court-martial as provided in this chapter.

§ 54, c. 86, 1891.

§ 1410. Action against members of military court. No action shall be maintained against any member of the 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 to the charges made against him.

§ 55, c. 86, 1891.

§ 1411. No action, when. When a suit or proceeding is commenced in any court by any person against an officer of the national guard for any act done by such officer in his official capacity in the discharge of any duty under this chapter, or against 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 which may be incurred therein by the defendant. In case the plaintiff shall be nonsuited, or have verdict or judgment rendered against him, the defendant shall recover treble costs and such attorney's fee as the court shall allow, which fee shall be in the first instance paid by the state, and be refunded by defendant on collection of the judgment.

§ 56, c. 86, 1891.

§ 1412. Compensation of officers and men. There shall be allowed and paid as hereinafter provided to such officers and enlisted men as shall be ordered to attend annual encampments in pursuance of the provisions of this chapter, the following sum each, for each day actually on duty, or in going to and returning from the same, the certificate of the officer ordering the duty to be evidence of such service; all officers and men ordered into actual service shall be paid double the amount paid at annual encampments:

To musicians, privates and teamsters, seventy-five cents.

To corporals, farriers and saddlers, one dollar.

To sergeants and drum majors, one dollar and fifteen cents.

To first sergeants, principal musicians and chief trumpeters, one dollar and twenty-five cents.

To sergeant majors, sergeants of supply, hospital sergeants and chief musicians, one dollar and fifty cents.

To second lieutenants, one dollar and seventy-five cents.

To first lieutenants, one dollar and seventy-five cents.

To captains and company commanders, two dollars.

To lieutenant colonels, majors, or battalion commanders, two dollars and twenty-five cents.

To brigadier general and colonel, three dollars.

To staff officers, the same as officers of like grade in the line or field.

§ 57, c. 86, 1891.

§ 1413. Members of guard to provide horses. Compensation therefor. All members of the national guard who 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 is on duty in the service of the state, or as may be provided in this chapter. The sums authorized by this section shall be paid by the chief of supply in such manner as the commander in chief may direct.

§ 1414. Compensation of officers detailed on courts or 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 this chapter shall be paid their subsistence and actual traveling expenses, and for each day actually employed on such board or court or engaged in the business thereof or in traveling to and from the place of meeting of such board or court, a sum equal to one day's pay for field duty. § 58, c. 86, 1891.

§ 1415. 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 for in section 1412 and also their subsistence in kind, or commutation thereof and their transportation or mileage. The rates of commutation or mileage shall be fixed by order of the commander in chief. § 59, c. 86, 1891.

§ 1416. Clothing and equipment fund, how constituted. On the certificate of the adjutant general each regimental headquarters, staff and band, battalion and staff, troop, battery or company shall be allowed annually a sum equal to seven dollars for each of its officers and men present for duty, based upon the percentage present for duty for the year at the five compulsory parades required in section 1394, and the annual muster and inspection, which sums, together with fines and penalties collected from delinquent officers and men, shall constitute the clothing and equipment fund of such organization and the clothing and equipment purchased with such fund shall be the property of the state. § 60, c. 86, 1891.

§ 1417. 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 shall at all times be prepared to furnish such things as may be required by order of the commander in chief. § 61, c. 86, 1891.

§ 1418. Property exempt from taxation. All property belonging to any organization of the 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 the following section may be paid into the treasury of such organization. § 62, c. 86, 1891.

§ 1419. Armory rent, how paid. The commanding officer of each company, troop or battery and the treasurer of each regimental band shall provide suitable rooms at a convenient place in the city 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 such rooms shall be under the exclusive control of the commanding officer. There shall be an annual appropriation of three hundred dollars from § 63, c. 86, 1891.

the militia fund for the rent and furnishing of such armory or band quarters for each organization of the national guard to be paid by the state.

§ 64, c. 86, 1891.

§ 1420. National guard exempt from jury duty and poll tax. Each member of the North Dakota National Guard shall be exempt from jury duty and from the payment of poll tax.

§ 65, c. 86, 1891.

§ 1421. Exempt from arrest, when. Have right of way on highway. No person 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.

§ 66, c. 86, 1891.

§ 1422. Officers to report, when. Each 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 to the chief of the departments 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.

§ 67, c. 86, 1891.

§ 1423. Military outfits and supplies not to be sold or disposed of. 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 or soldier of the state, and shall thereupon be delivered to any officer of the state authorized to receive the same.

§ 68, c. 86, 1891.

§ 1424. Lost or stolen property, how valued. All property of the state which is lost, stolen, damaged or destroyed in the military service, shall be acted upon by a disinterested inspector or officer, detailed for that purpose, who shall make a 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 by 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 state treasury. In the event of such person's failure or neglect to reimburse the state, suit may be brought 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.

§ 1, c. 87, 1891.

§ 1425. Appropriation. For the purpose of carrying out the provisions of this chapter there is hereby annually appropriated the sum of eleven thousand dollars or so much thereof as may be necessary, out of any money in the state treasury; and all warrants against such appropriation shall be drawn by the state auditor upon the state treasurer upon the certificate of the adjutant general, approved by the governor.

CHAPTER 20.

MINES AND MINING.

ARTICLE 1.—LOCATION AND SIZE OF CLAIMS.

§ 1426. **Length of lode claim fifteen hundred feet.** 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. § 1, c. 31, Pol. C.

§ 1427. **Width of lode one hundred and fifty feet.** The width of lode claims shall be one hundred and fifty feet on each side of the center of the vein or crevice; provided, that any county may at any general election determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at such election, and any county by such vote at such election may determine upon a less width than above specified; provided, that not less than twenty-five feet on each side of the vein or lode shall be prohibited. § 2, c. 31, Pol. C.

§ 1428. **Discoverer must record his claim.** 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: § 3, c. 31, Pol. C.
§ 1.2, c. 96, 1881.

1. The name of the lode.
2. The name of the locator.
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.

§ 1429. **Certificate void, when.** 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. § 4, c. 31, Pol. C.

§ 1430. **Manner of locating claim.** Before filing such location certificate the discoverer shall: § 5, c. 31, Pol. C.
§ 3, c. 96, 1881.

1. Locate his claim by first sinking a discovery shaft thereon sufficient to show a well defined mineral vein or lode.

2. 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 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 each side of the lode.

3. By marking the surface boundaries of the same.

§ 1431. **Marking surface boundaries.** Such surface boundaries shall be marked by eight substantial posts hewed or blazed on the side 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 as follows: One at the corner and one at the center of each side line and one at each end of the lode. § 6, c. 31, Pol. C.
§ 4, c. 96, 1881.

When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

§ 7, c. 31, Pol. C.

§ 1432. Requisites of location. Any open cut, cross-cut 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.

§ 8, c. 31, Pol. C.

§ 5, c. 96, 1881.

§ 1433. Time within which labor must be performed.

The discoverer shall have sixty days from the time of uncovering or disclosing a lode in which to sink a discovery shaft thereon.

§ 9, c. 31, Pol. C.

§ 1434. Certificate construed to contain what. The location or location certificate of any lode claim shall be so construed as 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 lies 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.

§ 10, c. 31, Pol. C.

§ 1435. Claim not extended beyond the exterior 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.

§ 12, c. 31, Pol. C.

§ 1436. Owner of land may demand security of 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 is refused may enjoin such miner from working until such security is given. The injunctive order shall fix the amount of bond.

§ 13, c. 31, Pol. C.

§ 1437. Amended certificate may be 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 chapter, such locator or his assigns may file an additional certificate subject to the provisions of this chapter; provided, that such relocation does not interfere with the existing rights of others at the time of such relocation; and no such relocation nor the record thereof shall preclude the claimant from proving any such title as he may have held under previous locations.

§ 14, c. 31, Pol. C.

§ 6, c. 96, 1881.

§ 1438. Amount of work that must be done annually.

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; 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 the location of such claim.

§ 16, c. 31, Pol. C.

§ 1439. Relocating abandoned claims. The relocation of abandoned lode claims shall be made 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 add to a sufficient depth to comply with sections 1430 and 1434, 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.

§ 1440. Certificate can contain but one location. No location certificate shall claim more than one location, whether the location is made by one or several locators; and if it purports 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. § 17, c.31, Pol.C.

§ 1441. Fee for recording. 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 with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents. § 18, c.31, Pol.C.

ARTICLE 2. — DISPUTED MINING PROPERTY.

§ 1442. Judge may order survey of mines in cases of disputed property. In all actions in any district court of this state wherein the title or right of possession to any mining claim shall be in dispute, the court or 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 related 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 survey and observe the method of making the same; such second survey shall be at the cost of the party asking the same. 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 such 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 upon notice of the application for 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 affidavit 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. § 19, c.31, Pol.C.

§ 1443. Writs of injunction may be issued for affirmative relief. The district court or the judge thereof in vacation

shall have, in addition to the powers already possessed, power to issue writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person to the possession of any mining property from which he may have been ousted by force and violence or by fraud or from which he is kept out of possession by threats, or whenever such possession was taken from him 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 shall 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.

CHAPTER 21.

DRAINS.

§ 1, c. 51, 1895. **§ 1444. When drains may be constructed.** Water courses, ditches and drains for the drainage of sloughs and other low lands may be established, constructed and maintained in the several counties of this state whenever the same shall be conducive to the public health, convenience or welfare under the provisions of this chapter. The word "drain" when used in this chapter shall be deemed to include any natural water course opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains constructed for such purpose.

§ 2, c. 51, 1895. **§ 1445. Power of county commissioners. Petitions.** The board of county commissioners of any organized county in this state shall have power and is authorized at any meeting of the board, by a majority vote of all the members to appoint on the petition of any person interested, three freeholders of the county, as a board of drain commissioners of such county, who shall hold office for two years, and until their successors are appointed and qualified. The board of county commissioners may remove for cause any or all of such drain commissioners, and in case of a vacancy may fill the same by appointment.

§ 3, c. 51, 1895. **§ 1446. Oath of office. Bond.** Any person appointed as a member of the board of drain commissioners shall within ten days after his appointment take, subscribe and file in the office of the county auditor an oath faithfully to perform the duties of a drain commissioner under the law, and within the same time make, execute and file in such auditor's office a bond to the county with sureties to be approved by the auditor in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of his duties as drain commissioner.

§ 4, c. 51, 1895. **§ 1447. Petitions in writing. Plans and specifications.** A petition for the construction of a drain may be made in writing to the board of drain commissioners, if among the leading purposes of the proposed drain are benefits to the health, convenience or welfare of the people of any city or other municipality. The petition shall be signed by a sufficient number of the citizens of such municipality or municipalities to satisfy the board of drain commissioners that there is a public demand for such drain. If the chief purpose of such

drain is the drainage of agricultural, meadow, grazing or other lands, the board of drain commissioners shall require that the petition be signed by the owners or legal representatives of such lands, as in the aggregate will, in the event of the construction of the drain, be liable to assessment for a major portion of the cost thereof, upon the presentation of a petition as hereinbefore provided, and filing of the same. The board of drain commissioners shall personally, as soon as practicable proceed to examine the line of the proposed drain and if in its opinion it is necessary and for the public good, it shall cause a survey of the line thereof to be made by a competent surveyor, who shall establish the commencement and terminus and determine the route, width, length and depth thereof. For the purpose of making examinations or surveys, the board of drain commissioners, surveyor and their employees may enter upon land traversed by any such proposed drain, or upon other lands when necessary. Such surveyor shall prepare profiles, plans and specifications of the proposed drain, an estimate of the cost thereof and a map or plat of the lands to be drained, showing the regular subdivisions thereof, all of which shall be filed in the office of the county auditor of the county in which such drain is proposed to be constructed subject to inspection. In locating a drain the board of drain commissioners may under the advice of the surveyor vary from the line described in the petition as it deems best. When the line proposed is along highways already established the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof; when the length of the line described in the petition does not give sufficient fall to drain the lands sought to be drained, the board of drain commissioners may extend the drain below the outlet named in the petition far enough to obtain a sufficient fall and outlet. Drains shall as far as practicable be located on dividing lines between sections or regular subdivisions thereof, but the general utility of the drain must not be sacrificed to avoid crossing any tract of land in such direction as the board of drain commissioners find advisable. All persons whose land may be affected by any such drain may appear before the board of drain commissioners and fully express their opinions upon the matters pertaining thereto.

§ 1448. Commissioners may deny petition, when. If upon such examination and survey or upon the trial in the district court it shall appear that there was not sufficient cause for making such petition or that the proposed drain would cost more than the amount of benefit to be derived therefrom, the board of drain commissioners shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in the proceedings to be recovered by such board by action. § 5, c. 51, 1895.

§ 1449. Right of way. The title to the right of way for the construction of any proposed drain, if not conveyed to the county by the owner, may be acquired in such manner as may now or hereafter be prescribed by law. Such right of way when acquired shall be the property of the county. § 6, c. 51, 1895.

§ 1450. Assessment of damages, how made. Upon the assessment by the jury, court or referee of the amount of damages to which the respective owners of the right of way to be used for the construction of any proposed drain are entitled, the board of drain commissioners shall assess the per cent of the cost of acquiring the right of way in the manner provided in section 1452, make a return § 7, c. 51, 1895.

to the county auditor, containing all that is required in section 1453, except an order establishing the drain and make, serve and file the list provided for in section 1457. Thereupon the board of drain commissioners may issue warrants in a sum sufficient to pay the damages assessed for right of way, drawn upon the proper county treasurer and payable out of any funds in the hands of the treasurer for the construction of the drain for which such right of way is sought to be obtained and shall negotiate the same at not less than the par value thereof and pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer, who shall place the same to the credit of the proper drain fund. If warrants are not issued, or if issued, cannot be negotiated, no further proceedings shall be taken until the special tax levied to pay for the right of way is collected and paid into the court for the benefit of the owners of the right of way.

§ 8, c. 51, 1895. **§ 1451. Assessment of benefits subject to review.** Every assessment of benefits provided for in this chapter shall be subject to review and ten days' notice of the time and place when and where such assessment will be reviewed by the board of drain commissioners shall be given in the manner provided in section 1454. At the time and place appointed such board shall proceed to hear all complaints relative to such assessment and correct or confirm the same.

§ 9, c. 51, 1895. **§ 1452. Accruing benefits.** Upon acquiring the right of way either by conveyance or proceedings in court, the board of drain commissioners shall make an order establishing the drain, give the same a name by which it shall be recorded and indexed, and assess the per cent of the cost of constructing and maintaining such drain, which any county, township, city, village or town shall be liable to pay by reason of the benefits of such drain to the public health, convenience or welfare, and which any railroad company shall be liable to pay by reason of benefits to accrue to its property, and which any piece or parcel of land shall be liable to pay, by reason of benefits to accrue thereto, either directly or indirectly, by reason of the construction of such drain, whether such lands are immediately drained thereby, or can be drained only by the construction of other and connecting drains, but such assessment shall be subject to review by the commissioners as hereinafter provided.

§ 10, c. 51, 1895. **§ 1453. Commissioners shall make return to auditor.** After the order establishing a drain, and the assessment of benefits have been made as provided in the last section, the board of drain commissioners shall make return thereof to the county auditor, who shall record the same in a book to be provided for that purpose. Such return shall contain the petition for the drain, or a copy thereof, the minutes of the survey signed by the surveyor, conveyances of the right of way, if any, a copy of the judgment in the action to acquire the right of way, if any, together with the minutes of the doings of the board of drain commissioners in the premises, the order establishing the drain, and the assessment of benefits.

§ 11, c. 51, 1895. **§ 1454. Manner of letting contracts. Notice published.** Upon the establishing of the drain, as hereinbefore provided, the board of drain commissioners shall without delay divide the line thereof into convenient divisions for construction, make diagrams of the same with specifications of the width of excavation at the bottom, the slope of the sides, and such other matters as may be necessary for

the proper construction of the drain, and set suitable stakes in such places as may be necessary to show the beginning and end of divisions and the number of the division and grade stakes to show the depth of cut at such intervals as may be necessary. Such board shall give at least ten days' notice of the time when and the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county and printed notices not less than five in number shall be posted at such points in each township or municipality interested in such drain as will be likely to secure the greatest publicity for such notice. Such notice shall also state that at the time and place of such letting of contracts the assessment of benefits will be subject to review, unless such assessment has already been reviewed, under the provisions of section 1451.

§ 1455. Commissioners may defer letting of contract. At the time and place appointed the board of drain commissioners shall proceed to hear all complaints relative to such assessments, unless a hearing has already been had under the provisions of section 1451, and correct and confirm the same. Such board shall then proceed to let contracts for the construction of the drain by divisions as it shall have divided the same, to the person who will do the work according to the specifications, for the lowest price and give adequate security for the performance of the same within such time as the contract shall specify. Such board may adjourn such letting in whole or in part and from time to time to such other time and place, to be by it at the time of such adjournment publicly announced, as shall to it seem proper and it may reserve the right to reject any and all bids. The parties who are to be assessed for the construction of such drain and who may be bidders for contracts thereon shall, if equal bidders with other parties, be preferred in the awarding of such contracts; provided, that contracts for the building of the bridges and culverts mentioned in section 1463 may be deferred, until the construction of the drain has reached such a stage of completion that the character of the bridges and culverts which will be needed can be determined. As soon as the character of such bridges and culverts can be determined such board shall cause plans and specifications of the bridges and culverts to be constructed in connection with such drain to be prepared and shall give at least ten days' notice of the time and place when and where it will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county. Such contracts shall be let to the lowest bidder as hereinbefore in this section provided. § 12, c. 51, 1895.

§ 1456. General duties of commissioners. After the letting of such contracts or a major portion thereof such board shall make a computation of the cost of such drain which shall include all the expenses of locating and establishing the same, including the cost of right of way, the drain commissioners' fees, cost of survey, cost of building bridges and culverts, interest on all warrants issued or to be issued by the board of drain commissioners on account of the drain, accumulated or to accumulate prior to the time when the tax levied or to be levied to pay for the right of way or construction of the drain is collectible by law and all other expenses and the amount of the contracts and in case contracts shall not have been let for the construction of the whole of the drain or of the bridges and culverts, the board of drain commissioners shall estimate the cost of such unlet § 13, c. 51, 1895.

portion and of the bridges and culverts predicated its estimate so far as may be upon the cost of those portions that have been let or upon similar work. The sum of all the costs and expenses incurred or to be incurred shall be the cost of the construction of the drain.

§ 14, c. 51, 1895.

§ 1457. Lands benefited. Special tax. The board of drain commissioners shall make a list showing the amount which each municipality and tract of land benefited by the drain for which the tax is levied is liable to pay on account of procuring the right of way or the construction of any drain, or both according to the per cent which by section 1452 it is required to fix and determine, a copy of which shall be served on the clerk or auditor of each municipality against which taxes are to be assessed. Such list shall thereupon be filed in the office of the county auditor of the county in which the municipalities and lands benefited by the drain are situated, and the auditor shall thereupon extend upon the tax lists as a special tax as provided by law the several amounts shown by the drain commissioners' list, specifying in such tax lists the particular drain for the construction or procurement of the right of way of which such special tax is assessed, which special tax shall be collected and enforced in the same manner as other taxes. When such special tax is for right of way the same shall when collected be paid by the county treasurer into court for the benefit of the owners of the right of way.

§ 15, c. 51, 1895.

§ 1458. County treasurer shall collect drain tax. The drain taxes shall be collected by the county treasurer and all moneys so collected shall be credited to the drain fund to which they belong and the county treasurer shall be the treasurer of such drain funds. Payment of all expenses and costs of locating and constructing any drain shall be made by the board of drain commissioners issuing warrants in such amounts and to such persons as by such board may be found due. All warrants drawn by such board in payment for the right of way or construction of any drain shall be payable from the proper drain fund and shall be receivable for the taxes levied for the right of way or construction of such drain by the treasurer. All such warrants after presentation to the county treasurer for payment, if not paid for want of funds, shall be registered by the county treasurer and thereafter shall bear interest at the rate of seven per cent per annum.

§ 16, c. 51, 1895.

§ 1459. Additional assessment. When necessary. In case the amount realized from the assessment made for right of way or for the construction of any drain shall not be sufficient to pay for such right of way or to complete such drain, and to pay fees and all incidental expenses, or in case an enlargement or deepening of such drain or an extension of the line thereof becomes necessary, a further assessment shall be made to meet the deficit or additional expense, and the amount thereof shall be levied and collected in the manner hereinbefore provided.

§ 17, c. 51, 1895.

§ 1460. Extension of time to contractors. The board of drain commissioners shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board of drain commissioners may in its discretion at any time thereafter, re-let such unfinished portion or any part thereof, after not less than five days' notice thereof to the lowest responsible bidder and shall take security as before. The cost of completing such parts over and above the contract price, and the

expense of notices and re-letting shall be collected by the board of drain commissioners of the parties at first contracting; provided, that in no case shall the board of drain commissioners forfeit and annul a contract without five days' notice to the contractor, if found, and if not found, then by written notice left at his last place of residence, if known to be within the county.

§ 1461. Extension of powers, when necessary. The powers conferred by this chapter for establishing and constructing drains shall also extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed; also to straightening, clearing out and deepening the channels of creeks and streams and the construction, maintaining, remodeling and repairing of levees, dykes and barriers for the purpose of drainage and the board of drain commissioners may relocate or extend the line of any drain if the same is necessary to provide a suitable outlet and shall cause a survey thereof to be made, but no proceedings affecting the right of persons or property shall be had under this section, except upon the notice, hearing and award prescribed in this chapter for the construction of drains in the first instance. § 18, c. 51, 1895.

§ 1462. Duty of railroad companies. Drains may be laid along, within the limits of or across any public road, and when so laid out and constructed or when any road shall hereafter be constructed along or across any drain it shall be the duty of the board of county commissioners, or township supervisors, as the case may be, to keep the same open and free from all obstructions. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad it shall be the duty of such railroad company, when notified by the board of drain commissioners to do so, to make the necessary opening through said road and to build and keep in repair suitable culverts or bridges. § 19, c. 51, 1895.

§ 1463. Construction of bridges and culverts. When any drain crosses a highway the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of constructing such drain, after which such bridge or culvert shall be maintained as part of the highway. The board of drain commissioners shall construct such bridges or culverts over or in connection with each drain as may in its judgment be necessary to furnish a passage from one part to another of any farm or tract of land intersected by such drain and the cost of the construction thereof shall be charged as part of the cost of constructing such drain and such bridge or passageway shall be maintained under the authority of the board of county commissioners or township supervisors, as the case may be, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. § 20, c. 51, 1895.

§ 1464. Blind drains, how constructed. Blind drains may be constructed by the use of drain tile or sewer pipe, when the nature of the ground will admit of so doing. When blind drains are constructed the entrance shall be protected from drift wood and other debris. § 21, c. 51, 1895.

§ 1465. Legal drains shall be recorded. All drains regularly established, opened or constructed under existing provisions of law shall be deemed legal drains and it shall be the duty of all boards of county commissioners, in cases where the records of any drain may not have been preserved, to see that such record is made in the best manner practicable in the office of the county auditor. § 22, c. 51, 1895.

§ 23, c. 51, 1895. **§ 1466. Tax or assessment void, when.** The collection of no tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under this chapter shall be perpetually enjoined or declared absolutely void in consequence of any error of any officer or board in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any drain shall have been located and established, nor for want of proper conveyance or condemnation of the right of way, but the court in which any proceeding may hereafter be brought to reverse or to declare void the proceedings by which any drain has been located or established or to enjoin the tax levied to pay the labor and cost and expenses shall on application of either party appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary; and the court shall on a final hearing make such order in the premises as shall be just and equitable, and may order such tax to remain on the tax lists for collection, or order the same to be relieved, or may perpetually enjoin the same, or any part thereof, or if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable to be refunded, the costs of said proceedings to be apportioned among the parties as justice may require.

§ 24, c. 51, 1895. **§ 1467. Drain kept open and in repair. Cost of.** All drains that may have been constructed under any law of this state, or that may be constructed under the provisions of this chapter and situated in this state, shall, except as otherwise provided be under the charge of the board of county commissioners and their successors in office and be by them kept open and in repair. In all cases when any completed drain is or may be situated in more than one county the care of the portion thereof lying within any county is hereby assigned to the board of county commissioners of such county to be by it kept open and in repair. The cost of such keeping open and in repair shall in all cases be assessed, levied and collected in the same manner as is provided in this chapter for the construction of drains in the first instance, and in cases when no assessment of benefits shall have been made, the board of commissioners having charge of or to whose care such drain may be assigned shall make such assessment.

§ 25, c. 51, 1895. **§ 1468. Rules and regulations.** The board of county commissioners of any county may make rules and regulations on the subject of drainage within such county, as it may deem proper, not inconsistent with the provisions of this chapter and especially with regard to clearing out and keeping clear the channels of streams and the construction and maintenance of dams thereupon, with reference to their capacity for drainage and may require of the owners of such dams reasonable service in cleaning and keeping such streams clear as a consideration for the right to erect dams thereupon.

§ 26, c. 51, 1895. **§ 1469. Liability of drain commissioner.** Each board of drain commissioners shall make a report to the board of county commissioners of all drains begun, in process of construction or finished and shall also render a full account of all moneys which shall come into its hands; and every drain commissioner shall be liable on his bond for any misapplication of money coming into his hands as such commissioner. The report required by this section shall include an itemized statement of all expenses and warrants drawn on account of each and every drain.

§ 1470. Compensation for commissioners and publishers. § 27, c. 51, 1895.
Drain commissioners shall receive for their services such amount, not less than two nor exceeding three dollars per day, for the time actually spent by them in performing the duties of their offices as may be fixed by the board of county commissioners. Publishers of newspapers shall receive for publishing legal notices and furnishing evidence of such publication the fees prescribed by law for legal advertisements.

§ 1471. Penalty. If any person shall willfully and maliciously remove any surveyor's stake set along the line of any drain laid out under the provisions of this chapter, or obstruct or injure any such drain, he shall for each and every such offense be subject to a penalty not exceeding ten dollars together with such sum as will be required to repair such damage and costs of suit, which penalty may be recovered in an action by the board of drain commissioners or county commissioners as the case may be. Whenever the amount of any recovery shall be collected it shall be deposited with the county treasurer to the credit of the proper drain fund. § 28, c. 51, 1895.

§ 1472. State and county officers not eligible. No person holding any state or county office shall be eligible to the office of drain commissioner, and any drain commissioner accepting any state or county office shall thereupon be considered as having vacated the office of drain commissioner. § 29, c. 51, 1895.

§ 1473. Power to administer oath. Drain commissioners shall have power to administer any oath required in any proceeding had before them or in which they may be called to act officially. § 30, c. 51, 1895.

§ 1474. Bonds, when and how issued. The board of county commissioners of any county in which any such drain is proposed to be located and constructed is authorized to issue bonds in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right of way or in locating and constructing any such drain, said word "expenses" to be construed to mean and to cover every item of cost of such drain from its inception to its completion as hereinbefore provided, which bonds shall be paid out of the revenues to be derived from taxes levied or to be levied and collected from that portion of the county found by the board of drain commissioners to be benefited thereby. Such bonds shall bear interest at a rate not exceeding seven per cent, and shall be payable not exceeding twenty years from the date thereof, and the said board shall provide sinking funds for the payment at maturity of each series of bonds issued and for the payment of the annual interest on the same. The bonds issued under the provisions of this chapter shall be signed by the chairman of the board of county commissioners of such county and countersigned by the county auditor who shall keep a record of the bonds issued under the provisions of this chapter. Such board shall have the power to negotiate such bonds at not less than the par value thereof as it may deem best for the interest of all persons interested in such drain. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this chapter and that they are to be paid out of sinking funds to be created as in this chapter provided. Whenever such bonds shall be issued the tax hereinbefore provided for shall not be collected all in one year, but shall be divided into as many parts as such bonds have years to run and one of such parts shall be extended upon the tax lists by the § 31, c. 51, 1895.

county auditor against the proper parcels of land and property liable to taxation for that purpose in each and every year and collected in such year and such fund shall constitute the sinking fund provided by this section. The board of county commissioners shall in each year at the time of levying the taxes, levy upon the property liable to taxation on account of the location and construction of any drain a tax sufficient to pay the annual interest on any bonds which may have been issued for the purpose of locating and constructing the drain. Separate sinking funds shall be provided for each separate drain for the construction of which bonds shall be issued and no funds in any such sinking fund shall be applied to any other purpose than the payment of the bonds for the payment of which such fund was created. No county shall be liable for the payment of any bonds issued under the provisions of this chapter, but such bonds shall be paid only out of the sinking funds created as in this chapter provided.

CHAPTER 22.

POLICE OF THE STATE.

ARTICLE 1.—SUPPORT OF THE POOR.

§§ 1, 2, c. 33,
Pol. C.

§ 1475. County commissioners overseers of the poor. The county commissioners of the several counties in this state shall be overseers of the poor within their respective counties and shall perform all the duties with reference to the poor that may be prescribed by law. Each board of county commissioners shall, in discharging the duties imposed by this chapter, be designated as overseers of the poor.

§ 3, c. 33, Pol. C.
am'd.

§ 1476. 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 by or against such county.

§ 4, c. 33, Pol. C.

§ 1477. Each county shall relieve its poor. Each county shall relieve and support all poor and indigent persons residing therein, whenever they shall be in need thereof, and the board of county commissioners may raise money for the support and employment of the poor in the manner provided in section 1491.

§ 5, c. 33, Pol. C.
am'd.

§ 1478. Residence acquired. Married women and children. Residence may be acquired in any county so as to oblige such county to relieve and support the persons acquiring such residence, in case they are in need of relief, as follows:

1. The residence of a married woman follows that of her husband if he has any within the state, otherwise her own at the time of her marriage, and if she then had any residence it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her residence, and the husband shall need relief, he shall receive it in the place where his wife shall have her residence.

2. Legitimate children shall follow and have the residence of their father if he has any within the state, until they shall gain a residence of their own, but if the father has no residence they shall in like manner follow and have the residence of their mother if she has any.

3. Illegitimate children shall follow and have the residence of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a residence by birth in the place where they were born, unless their parent or parents had a residence therein at the time.

4. Each male person and each 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 residence in such county.

5. Each minor whose parents, and each married woman whose husband, has no residence in this state, who shall have resided ninety days in any county in this state, shall thereby gain a residence in such county.

6. Each minor who shall be bound as an apprentice to any person shall immediately upon such binding, if done in good faith, thereby gain a residence where his master has a residence.

7. Each residence when once legally acquired shall continue until it is lost or defeated by acquiring a new one in this state, or by voluntary absence from the county in which such residence had been obtained, for ninety days or more; and upon acquiring a new residence, or upon the happening of such voluntary absence all former residences shall be defeated and lost, and the provisions of this section shall apply to cases of residences begun to be acquired or lost or defeated, as well heretofore as hereafter.

§ 1479. Overseers have care of the 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. § 6, c. 33, Pol. C.

§ 1480. Allowance for the support of poor persons. The board of county commissioners may in its 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 such children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, such board taking the usual amount of charges in like cases as the rule for making such allowance. § 8, c. 33, Pol. C.

§ 1481. Complaint in behalf of the poor. Duty of overseers. It shall be the duty of the 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 poor have not been sufficiently provided with the common necessities of life, or have in any respect been illtreated by the person under whose charge they have been placed, to withhold any part of the compensation allowed to the person keeping them, as such overseers may deem reasonable and proper, and remove such poor and place them in the care of some other person. § 9, c. 33, Pol. C.

§ 1482. Poor book to be kept. The overseers of the poor shall enter in the poor book of their respective counties the names of all poor persons in their county who are unable to care for themselves, and who are in their judgment entitled to the benefits of the provisions of this article, together with the date of such entry. § 10, c. 33, Pol. C.

§ 1483. Appeal to district judge. If any poor person shall suppose that he is entitled to the benefits of this article, and the over- § 11, c. 33, Pol. C.

seers of the poor of the county in which he resides shall refuse to give such person the benefit thereof upon application of such person the judge of the district court of the county or judicial subdivision may, if he thinks proper, direct such overseers to receive such person on the poor list on his application therefor.

§ 12, c.33, Pol.C.

§ 1484. When residence is uncertain. If any one within the description of poor persons specified in this article 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 residence of such person, they may proceed in their discretion to provide for such person in the same manner as other persons are provided for.

§ 13, c.33, Pol.C.
am'd.

§ 1485. Temporary relief for certain poor. Whenever any person entitled to temporary relief as a pauper shall be in any county in which he has not a legal residence, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief by placing him temporarily in the poor house of such county, if there is one; but if there is no poor house they may provide the same relief as is customary in other cases.

§ 14, c.33, Pol.C.

§ 1486. Justice of the peace may issue warrant of removal. 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, likely to become a public charge, and having no legal residence therein, to be sent at the expense of the county to the place where such person belongs, if the same can be conveniently done; but if he cannot be removed, such person shall be relieved by such overseers whenever such relief is needed.

§ 15, c.33, Pol.C.

§ 1487. Overseers of the poor aggrieved by removal. 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, such appeal to be taken, tried and determined and costs taxed as in other cases of appeal from the judgment of a justice of the peace, and the order of removal may be vacated or affirmed as the facts warrant.

§ 16, c.33, Pol.C.
am'd.

§ 1488. Appeal heard, how. Such appeal shall be heard at the term of court next after the same is filed therein, if in the opinion of the court reasonable notice of the appeal has been given to the opposite party; but if not thus given, the cause shall stand continued until the next term of the court.

§ 17, c 33, Pol.C.
am'd.

§ 1489. When order of removal is 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 in other cases.

§ 18, c.33, Pol.C.

§ 1490. Removal. Duty of overseers of county to which removed. If any person is removed by virtue of the provisions of this article from any county to another place within this state, by warrant or under the hand of any justice of the peace as hereinbefore provided, the overseers of the poor of the county to which such person is removed are required to receive such person if he has a legal residence in their county.

§ 1491. Overseers to make return to county auditor. § 19, c.33, Pol.C.
The overseers of the poor shall make return to the county auditor of am'd.
the sums of money required for the poor of their respective counties, which sum shall be paid in quarterly installments out of the county treasury upon the order of the board of county commissioners in the same manner as other claims against the county are paid.

§ 1492. Compensation of overseers. § 20, c.33, Pol.C.
The overseers of the poor shall be entitled to receive two dollars per day each for every day during which they shall be necessarily employed in the discharge of their duties as such, to be allowed by the board of county commissioners.

§ 1493. Overseers shall submit accounts, when. § 21, c.33, Pol.C.
The overseers of the poor shall annually at the first session of the board of county commissioners in each year, submit their accounts and make a report of their proceedings for the past year, which report shall be presented to the county auditor at least one day prior to the meeting of such board, and the board may allow such accounts so presented, and 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.

§ 1494. Nonresident sick or dying within county. § 22, c.33, Pol.C.
It shall be the duty of the overseers of the poor, on complaint made to them that any person not a resident of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case may require; and if any person shall die within any county, who shall not have money or means necessary to defray his 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 the board of county commissioners.

ARTICLE 2. — ASYLUM AND POOR FARM.

§ 1495. Special election for the purchase of an asylum for the poor. § 23, c.33, Pol.C.
It shall be lawful for the board of county commissioners in the several counties of this state, after having submitted am'd.
the question to the legal voters of the county by calling a special election for that purpose whenever the commissioners may deem it advisable, and if at such election a majority of the legal voters shall vote in favor of the proposition, to purchase a tract of land in the name of the county and build, establish and organize thereon an asylum for the poor, and to employ some humane and responsible person, a resident of the county, 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 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, jointly to purchase lands and erect asylums and to continue such joint ownership during their pleasure; and to do such other things necessary and proper for the relief of the poor within such counties as might be done by a county acting alone.

- § 24, c.33, Pol.C. **§ 1496. Duty of superintendent of asylum.** The superintendent shall receive into his care and custody all persons who may become a county charge as paupers, and take such measures for the employment and support of such paupers, and perform such other duties as the board of county commissioners shall from time to time order and direct, consistent with the laws of this state.
- § 25, c.33, Pol.C. **§ 1497. Shall appoint a physician.** The board of county commissioners shall annually appoint a well qualified physician to attend the county asylum, and allow him a reasonable compensation for his services.
- § 26, c.33, Pol.C. **§ 1498. May bind out poor children.** The overseers of the poor shall bind out such poor children as fall under their care and charge from time to time; and the overseer shall see that the children so bound out are properly treated by the persons to whom they are bound, and take legal means of redress in case of maltreatment.
- § 27, c.33, Pol.C.
am'd. **§ 1499. Assessment of tax for purchase of poor farm.** To raise the sum necessary for the purchase of land and the erection and furnishing of buildings for such asylum, 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 1495, and a majority of all the votes cast at such election is in favor of such assessment.
- § 28, c.33, Pol.C. **§ 1500. All poor shall go to the asylum, when.** As soon as the necessary provisions are made by the erection of suitable buildings, the board shall order and direct 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, have such persons removed to such asylum.
- § 29, c.33, Pol.C. **§ 1501. Superintendent to give bond.** The superintendent shall execute a bond to the state in the sum of five hundred dollars with two or more sureties to be approved by the board, conditioned for the faithful discharge of his duties, and he shall make to such board at the first and third sessions in each year a detailed report in writing of the time and manner of the admission of each pauper, his health and fitness to labor, the results of his industry, and the expenses incurred; the members of such board shall in person annually inspect such asylum with regard to its fitness in all respects for the objects of its establishment.
- § 30, c.33, Pol.C. **§ 1502. Children shall be educated, when.** Whenever it shall be necessary and practicable, poor children of the asylum who cannot be bound out or whom it may not be expedient to bind out as apprentices, shall be educated thereat.
- § 31, c.33, Pol.C.
am'd. **§ 1503. Superintendence of the education of children.** The superintendent shall superintend and direct the education of such poor children and send them to any common school within the county, during the continuance of its session.
- § 32, c.33, Pol.C.
am'd. **§ 1504. Discontinuance of asylum.** Such asylum or poor farm may be discontinued by such board, and the property real and personal sold, leased or otherwise disposed of or applied in such manner as may be best for the interests of the county.

§ 1505. Board of county commissioners may levy poor tax. The board of county commissioners may, if it deems it expedient, annually, at its 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 its county. Such tax shall be collected by the county treasurer. § 33, c. 33, Pol.C.

§ 1506. Board appoints visitors. The board of county commissioners may in its discretion appoint a board of visitors annually, consisting of three residents of the county, to visit at least once in each year the asylum in such county, and report to the commissioners its condition, and the treatment, management and condition of the inmates thereof. § 35, c. 33, Pol.C.

§ 1507. Compensation. Such visitors shall receive such compensation as the board shall adjudge reasonable. § 36, c. 33, Pol.C.

§ 1508. Sending pauper out of county is unlawful. No person shall either directly or indirectly 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 article. § 37, c. 33, Pol.C.

§ 1509. Penalty for violation of last section. Any person who shall violate the provisions of the preceding section is guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or to imprisonment in the county jail not exceeding one year, or to both. § 38, c. 33, Pol.C.

§ 1510. Penalty for bringing pauper into the county. Every person who shall bring into and leave any pauper in any county wherein such pauper has not a lawful residence, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for each offense, to be sued for and recovered by and for 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 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. § 39, c. 33, Pol.C.

ARTICLE 3.—FOR RELIEF OF NEEDY SETTLERS.

§ 1511. Appropriation for. There is hereby appropriated annually out of any funds in the state treasury not otherwise appropriated, the sum of seven thousand dollars, or so much thereof as may be necessary, to be expended by the commissioner of agriculture and labor by and with the advice and consent of the governor, for the relief of the needy settlers in such counties, as by reason of their having reached their constitutional limit of indebtedness, may be unable to provide the necessities of life needed by destitute residents of such county. § 1, c. 24, 1891.

§ 1512. Accounts, how audited. The state auditor is authorized and directed to audit and allow the accounts of such commissioner of agriculture and labor when approved by the governor, secretary of state and attorney general, and he shall issue his warrants on the state treasurer for the amount of such accounts. § 2, c. 24, 1891. am'd.

ARTICLE 4.—CARE OF THE INSANE.

§ 16, c. 23, 1879.
am'd.

§ 1513. 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 county judge shall be a member of such board and its chairman. The other two members shall be appointed by the board of county commissioners, one of whom shall be a reputable practicing physician, and the other a reputable practicing attorney; and such appointments shall be made from persons residing as near as may be to the county seat. Such commissioners shall be appointed for the term of two years and until their successors are appointed and qualified. The appointment of successors can be made at any time within three months prior to the expiration of the term of the incumbents. In case of the temporary absence of such commissioners or their inability to act, the county judge shall call to his aid a reputable practicing physician or attorney, 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.

§ 17, c. 23, 1879.
am'd.

§ 1514. Oath of commissioners. Organization and meetings. Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath to support the constitution of the United States and the constitution of this state, and faithfully to discharge their duties as such commissioners according to law, which oath shall be filed with the county judge who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number as clerk of such board. They shall hold their meetings at the office of the county judge unless for good reasons they shall fix 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.

§ 18, c. 23, 1879.

§ 1515. Duties of chairman. Books to be kept. Notices. The chairman of the board shall sign and issue all notices, appointments, warrants, subpoenas and other process required to be given or issued by the commissioners, affixing thereto his official seal as county judge. 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 notices, reports and other communications. He shall keep separate books in which to record the proceedings of the board, and his entries shall be sufficiently full to show, with the papers filed, a complete record of the findings, orders and transactions. The notices, reports and communications herein required to be given or made, may be sent by mail unless otherwise provided, and the fact and date of such sending and their reception must be noted on the proper record.

§ 19, c. 23, 1879.

§ 1516. Duties and powers of commissioners. Such commissioners shall have cognizance of all applications for admission to the hospital or for the safe-keeping otherwise of insane persons within their county, except in cases otherwise specially provided for. They shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act necessary and proper in the premises.

§ 20, c. 23, 1879.

§ 1517. Applications for admission to hospitals. Applications 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 in 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 for the insane; that such person is found in the county and has a legal residence therein, if such is known to be the fact; and if such residence 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.

§ 1518. Investigation by commissioners as to the alleged insanity. § 21, c. 23, 1879. On the filing of an information as above provided, the commissioners shall at once investigate the grounds of such 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 presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation is concluded. Such warrant may be executed by the sheriff or any constable of the county, or if they shall be of opinion from such preliminary inquiries as they may make, and in making which they shall take the testimony of the informant if they deem it 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 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 such person and make a personal examination touching the truth of the allegations 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 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 is the fact, and if otherwise, not insane; and in connection with his examination such physician shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers, as far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogatories and answers shall be attached to his certificate.

§ 1519. How patient shall be sent to hospital. § 22, c. 23, 1879. 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 residence 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 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 residence of the person, if ascertained; and if not ascertained, 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 phy-

sician shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital and delivering him 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 county judge with his fees 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 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 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, if any. 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, and for so doing he shall be entitled to his necessary expenses, but no fees.

§ 25, c. 23, 1879.

§ 1520. Disposition of insane person when accommodations of hospital are insufficient. 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 patients 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 best to secure his safety and comfort, and in such manner as best to 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 overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such 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 the charge of the sheriff, or such commissioners in their discretion, may require that such persons 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 patients.

§ 26, c. 23, 1879.

§ 1521. Insane persons 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 provision 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 provided, the commissioners may provide for their care, protection and restraint as in other cases.

§ 1522. Commissioners to provide for insane persons suffering for want of proper care. § 27, c. 23, 1879. 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.

§ 1523. Insane not to be restrained of liberty except by proper authority. § 28, c. 23, 1879. No person supposed to be insane shall be restrained of his liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and for such brief period as may be necessary for the safety of persons and property until such authority can be obtained.

§ 1524. Penalty for cruelty to insane. § 29, c. 23, 1879. Any person having the 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.

§ 1525. Transfer of insane under county care. § 30, c. 23, 1879. 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 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 a further inquest advisable.

§ 1526. Questions to be answered on application for admission to hospital. § 31, c. 23, 1879. In each case of application for admission to the hospital, correct answers to the following interrogatories, 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 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, etc?
13. What relatives, including grandparents and cousins, have been insane?
14. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits, before becoming insane? Any predominant passion, religious impressions, etc?
15. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharge 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 matters supposed to have any bearing on the case.

§ 33, c. 23, 1879.

§ 1527. Proceedings for release of persons alleged not to be insane. 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 person confined in the hospital has his residence, alleging that such person is not insane and is unjustly deprived of his 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, one shall be an attorney. Without first summoning the person to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him, 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 person the object of their visit, and in the presence of such person make further investigation of the matter. They shall forthwith report to such county judge the result of their examination and inquiries. Such report shall be accompanied by a statement of the facts and signed by the superintendent. If on such report and statement and hearing of the testimony, if any is offered, the county judge shall find the person sane, he shall order his discharge. If he shall find him insane he shall authorize his continued detention. The finding and order of such judge 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 findings and order and the superintendent shall carry out such order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by such judge and paid by the state out of any funds not otherwise appropriated; provided, that the applicant shall pay the same if the judge shall find that such application was made without probable grounds, and shall so order.

§ 34, c. 23, 1879.

§ 1528. Same. Not to be repeated oftener than once in six months. The commission so provided for shall not be appointed

oftener than once in six months for the same person, nor shall such commission be appointed for any patient within six months of the time of his admission.

§ 1529. Insane persons entitled to 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 a second time, whenever it shall be alleged that such person shall have been restored to reason. § 35, c. 23, 1879.

§ 1530. Salaries and fees, how and by whom paid. The commissioners of insanity shall each be allowed the sum of two dollars per day for 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 services other 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 the sheriff, which shall be paid out of the state treasury in the usual manner. § 41, c. 23, 1879.
§ 1, c. 58, 1885.

§ 1531. Penalty for neglect of duty. Any officer required to perform any act and any person accepting an appointment under the provisions of this article who willfully refuses or neglects to perform his duty as herein prescribed shall be guilty of a misdemeanor, besides being liable to an action for damages. § 42, c. 23, 1879.

§ 1532. Terms "insane" and "idiot" defined. The term "insane" as used in this article 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 the insane. § 45, c. 23, 1879.

ARTICLE 5. — POSTAL RIGHTS OF INSANE PERSONS.

§ 1533. Postal rights, how secured. Each inmate of the hospital for the insane shall be allowed to choose one individual to whom he may write when or whatever he desires, and over letters to or from such individual no censorship shall be exercised or allowed by any person and each inmate shall have the right to make a new choice of such individual every three months if he so desires; and it is the duty of the superintendent to furnish each inmate with suitable material for writing letters, sufficient for the writing at least of one letter a week if the same is requested, unless he is 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 hospital, and kept in some place of easy access to all patients. The attendant is required in all cases to see that each letter is directed to the patient's correspondent, § 1, c. 122, 1887.
am'd.

and if it is not so directed it must be held subject 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.

§ 2, c. 122, 1887.

§ 1534. Duty of superintendent of hospital. It is the duty of the superintendent to keep registered and posted in some public place at the hospital a true copy of the names of each individual chosen as the inmate's correspondent, and by whom chosen; and to inform each of the individuals so chosen of the name of the person choosing him. The superintendent shall request each person so chosen to write his name on the outside of the envelope of each letter written to the inmate; and all letters bearing the individual writer's name on the outside shall be delivered, or caused to be delivered, by the superintendent to the inmate to whom directed without being opened, unless there is reason to believe the letter contains some foreign substance which might be used for medication, in which case the letter shall be opened in the presence of a competent witness and the substance if any shall be delivered to the superintendent.

§§ 3, 4, c. 122, 1887.
am'd.

§ 1535. Penalty for violation. Any person refusing or neglecting to comply with, or willfully or knowingly violating any of the provisions of this article, shall be guilty of a misdemeanor and be ineligible to any office in the hospital afterwards. A printed copy of this article shall be framed and kept posted in each ward of the hospital.

ARTICLE 6. — DOMESTIC ANIMALS.

MARKS AND BRANDS.

§ 1, c. 40, 1891.

§ 1536. Office for recording brands. A general office for recording marks, brands and trade-marks shall be maintained at the seat of government, and the duties thereof shall be performed by the secretary of state. The office of the register of deeds of each county shall be an auxiliary to said office, and the duties thereof shall be performed by the register of deeds.

§ 2, c. 40, 1891.
am'd.

§ 1537. Brands, how obtained and recorded. Whenever any person desires the exclusive use of any mark or brand, or trade-mark, he may make application therefor to the secretary of state setting forth a description of the mark, brand or trade-mark of which he desires the exclusive use, accompanying the same with a facsimile thereof and stating for what the same is to be used and the place or position it is to occupy, and it shall be the duty of the secretary to record such mark, brand or trade-mark, with a description of the place or position such mark or brand shall occupy on the animal, consulting always the choice and convenience of the applicant therefor, so far as may be, without conflicting or interfering with any previously recorded mark or brand.

§ 3, c. 40, 1891.

§ 1538. Secretary of state must record brands. The secretary of state shall keep a record of all marks, brands and trade-marks showing the names and residences of the person owning the same, together with a description and facsimile of such mark, brand or trade-mark, and in case of live stock the range occupied by such stock, as near as may be, which record shall be open to the inspection of any person interested, and he shall deliver to the owner of such mark, brand or trade-mark a certificate thereof, which certificate shall be deemed evidence of ownership, for which he shall charge and col-

lect a fee of one dollar. Such certificate shall also be recorded in the office of the register of deeds of the county in which such owner resides, or in the case of nonresident owners, the county in which the person having such stock in charge, resides, or where such stock may be situated, and may demand and receive a fee of one dollar.

§ 1539. Duty of register of deeds. The register of deeds may receive and forward to the secretary of state all applications for recording marks, brands and trade-marks, and shall collect the fee therefor, which fee shall be forwarded with the application to the secretary of state, but such certificate shall not be recorded by the register of deeds until it has been recorded by the secretary of state. The register of deeds shall furnish to the owner of all marks, brands or trade-marks a certificate showing the record thereof in his office. § 4, c. 40, 1891.

§ 1540. Brands must be vented. It shall be the duty of all persons who sell live stock of any kind to another to vent their brand on the part of the animal which the purchaser may determine; provided, that such vent brand shall be upon the same side of the animal as the original, either by inverting the original brand, or by a vent brand prepared for that purpose. Such vent brand shall be not less than one-half the size of the original brand, and shall be of the type of the original brand, and such venting as above provided shall be prima facie evidence of the sale or transfer of such stock. § 6, c. 40, 1891.

§ 1541. When similar brands may be recorded. The secretary of state shall refuse to receive for record any brand, which, being the same as any previously recorded, shall have added thereto any or either of the following: A bar, a circle, a half circle, a quarter circle, a diamond or a half diamond; provided, that a similar device, figure or letter, but placed on a different part of the animal, may be so received and recorded. § 7, c. 40, 1891.

§ 1542. Who have a right to record brands. All persons who have heretofore recorded any mark, brand or trade-mark in any county of this state, shall have the prior right to the exclusive use of such mark, brand or trade-mark; provided, that where two or more of such marks or brands conflict with each other, the one first recorded shall have priority; provided, further, that all stock brands recorded in the office of the secretary of state prior to the first day of December, 1891, under the provisions of chapter 37 of the laws of 1890 shall be in no wise invalidated by any of the provisions of this article. § 9, c. 40, 1891.

§ 1543. How to obtain exclusive brand. Any person desiring to secure within this state the exclusive use of any name, mark, brand, print, designation or description for any article of manufacture or trade or for any mill, hotel property, machine shop or other business, shall deliver or cause to be delivered to the secretary of state a particular description or facsimile of such mark, brand, name, print, designation or description as he desires to use, and if there is not an application already filed for the same or a similar mark, brand, name, print, designation or description, he shall immediately record the same in a book to be provided and kept for that purpose, which book shall be at all times subject to public inspection and examination, and after the same shall have been recorded as herein provided, the person causing the same to be recorded shall have the exclusive right to the use thereof; provided, that nothing herein contained shall be construed to authorize the use of figures, letters or Roman numerals. § 10, c. 40, 1891.

HERDING AND DRIVING.

§ 1, c. 60, 1881. **§ 1544. Stock grower and drover defined.** Each 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.

§ 5, c. 60, 1881.
am'd. **§ 1545. Driving stock and trespassing.** Any person owning or having charge of any cattle, horses, swine or sheep, who shall drive the same into or through any county of which the owner is not a resident or land owner or stock grower, and when the land in such county is already occupied by settlers on ranches, it shall be the duty of such owner or person in charge of such 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 such animals from trespassing on such land as may be the property of an actual settler or may be held by him under a homestead 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 person in charge of any such animals shall willfully, carelessly or negligently injure any resident of the state by driving such animals 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 nor more than twenty-five dollars, at the discretion of the court, and render the owner or person in charge of such animals liable for such damages as may be done to the property of such settler.

§ 6, c. 60, 1881.
am'd. **§ 1546. Wrongful driving off of stock. Penalty.** When the stock of any person shall be driven off its range within the state, against his will, by the owners of any drove, and the same shall be found among such drove, every person engaged as drover of such drove shall be liable for damages to the person injured to the amount of the value of the animal for each head so driven off, together with all costs accruing in the trial of such cause, and the owner of the animals so driven off shall have a lien on such herd for the amount of all such damages and costs.

§ 7, c. 60, 1881.
am'd. **§ 1547. Duty of drover when stock of resident mixes with drove.** When the stock of any resident of the state shall mix with any drove of animals, it shall be the duty of any drover or person in charge of such drove to cut out and separate such stock from such drove immediately. Each person, either owner or drover or otherwise connected with such drove, who neglects to comply with the provisions of this section shall be fined in a sum not exceeding one hundred dollars.

§ 8, c. 60, 1881. **§ 1548. Concerning skinned dead animals.** It shall be unlawful for any person other than the owner, his agent or employee, 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, in which case the employees of such railroad may remove the hides from stock so killed.

§ 1, c. 89, 1890.
am'd. **§ 1549. When lawful for stock to run at large.** It shall be lawful for cattle, horses, mules, ponies and sheep to run at large from the first day of November until the first day of April each year,

except within the corporate limits of any city or village; provided, that no stallion or vicious bull or any other animal known to be vicious, shall be allowed to run at large at any time; but nothing in this code shall be construed to repeal any special act establishing a fence law for any county in this state.

HERD LAW.

§ 1550. County commissioners shall order an election. § 1. c. 69, 1895.

How conducted. The board of county commissioners of any county shall, whenever it shall be presented with a petition signed by one-third of the qualified electors of said county, asking that the provisions of chapter 42 of the code of civil procedure be abolished therein, order an election to be held, at which election the qualified electors of such county shall vote upon the question of abolishing the provisions of chapter 42 of the code of civil procedure in such county. Such election shall be in all respects conducted as general elections are conducted, and the order of the board of county commissioners for such election shall be made at least sixty days before such election is held, and notice of such election shall be given in the same manner and for the same length of time as notices of general elections.

§ 1551. Law, when abolished. The ballots to be used at such election shall be in the following form: "For the herd law" and "against the herd law." In voting on the question, each voter must place to the left of the proposition he favors, the mark X. If a majority of the ballots cast at such election is against the herd law, the provisions of said chapter 42 shall be thereby abolished in such county. §§ 2,3, c. 69, 1895.

§ 1552. When the proposition may be submitted again. § 4. c. 69, 1895.
At any subsequent general election, but at no other time, after an election has been once held under the provisions hereof, the question of re-establishing the provisions of said chapter 42 within any county, having abolished the same, or of abolishing the provisions of said chapter 42 in any county which has once refused to abolish the same under the provisions of this chapter, may be again submitted by the board to a vote of the qualified electors thereof, to be voted upon in the same manner as hereinbefore provided for the first election. The result of any election held under the provisions hereof shall remain in force until changed at some subsequent election held hereunder.

§ 1553. When fences shall be sufficient and lawful. In any county in which an election has been held under the provisions hereof and in which the result of such election shall have been declared to be in favor of abolishing the provisions of said chapter 42, a fence constructed as hereinafter described shall be sufficient and lawful. § 5. c. 69, 1895.

§ 1554. How fences shall be constructed. The posts or other uprights of reasonable strength and firmness in position shall be not more than thirty-two feet distant from each other, with two suitable stays between posts, nearly equally dividing such space in three parts. Three strands of ordinary barbed fence wire shall be well stretched and firmly fastened to such posts, uprights and stays, with the upper strand not more than forty-eight nor less than forty-two inches above the general surface of the ground thereunder, and the lower strand not more than eighteen nor less than twelve inches §§ 6,7, c. 69, 1895.

above the general surface of the ground, and the middle strand nearly equally dividing the space between the upper and lower strands; provided, that all corral fence exclusively for the purpose of inclosing stacks, if 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, and shall be not less than five feet high. Any other kind of a fence or barrier which is as effective for the purpose of a fence as that above prescribed is hereby declared sufficient and lawful.

§§ 8, 9, c. 69, 1895.

§ 1555. Liability of owners of stock. Any person owning or having in charge any horses, mules, cattle, sheep or goats, or any such animals, which shall breach or break through, over or under any lawful fence, not the property of the owner of such offending animal, shall be liable to the party having sustained injury by reason of such breaching or breaking, to be recovered in a civil action before any court of competent jurisdiction, and it shall be sufficient in any such action, that it was a lawful fence where the breach was made, and the proceedings shall be the same as in other civil actions, except as herein modified. Any person owning or having in charge in any county, adopting the provisions hereof as herein provided, any swine which shall trespass upon the lands or premises of another, including premises in towns, villages and cities, whether such lands or premises are fenced or not fenced, shall be liable to any party sustaining such injury for all damages he may sustain by reason of such trespassing.

§§ 10, 11, c. 69, 1895.

§ 1556. Damages by trespassing animals. The persons sustaining damages as aforesaid shall before commencing an action therefor, notify the owner or person having in charge such offending animals of such damages, and the probable amount thereof if known, and a resident of and within the county, and he may retain and keep in custody such offending animals until the damages so sustained and costs are paid, or until sufficient security is given for the same; provided, that the person so restraining such offending animals shall, without unnecessary delay, notify the owner or person in whose custody the same were at the time the trespass was committed of the seizure of such animals, if such owner or person is known to him to be within or to reside within the county. For serving such notice the person making the same shall be entitled to the same fees and mileage as are allowed a sheriff in serving a summons.

§ 12, c. 69, 1895.

§ 1557. Damages a lien upon the animals. Upon the trial of an action under the provisions hereof, the plaintiff shall prove the amount of damages sustained, and the amount of expense incurred for restraining and keeping the offending animals, if such have by him been restrained, and any judgment rendered for damages against the defendant shall be a lien upon the animals committing the damages, and they may be sold and the proceeds applied to the satisfaction of the judgment.

§ 13, c. 69, 1895.

§ 1558. Service in case of unknown defendant. If upon the trial it shall appear that the defendant is not the owner or person in charge of such offending animals, he shall be discharged, and the action may proceed against a defendant, whose name is unknown, and, if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring an action 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 is one published in the county, and, if not, by posting copies of the summons and notice in three public places in the county, in either case at least ten days previous to the day of trial.

§ 1559. Judgment and costs collected, how. After judgment shall have been rendered against the defendant, unknown as aforesaid, the offending animals, or so many of them as may be necessary, shall be sold as in other civil actions, and after said judgment and costs have been satisfied, if there is any surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same within six months from the day of sale, it shall be paid into the school fund for the use of the public schools of the county. § 14, c. 69, 1895.

§ 1560. Misdemeanor, when. Taking or attempting to take, or advising or assisting in the taking from the possession of the person having them in charge, without the consent of such person, except by due course of law, any animals restrained and held by virtue of the provisions hereof, is declared to be 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, at the discretion of the court. § 15, c. 69, 1895.

§ 1561. Judgment of court final, when. Jury trial. In all actions under and by virtue of the provisions hereof wherein the amount of damages claimed does not exceed twenty-five dollars, the judgment of the court having original jurisdiction thereof shall be final: provided, that either party to such action shall be entitled, upon demand therefor, to a jury trial. § 16, c. 69, 1895.

§ 1562. Actions commenced. When barred. No property shall be exempt from seizure and sale under execution upon a judgment obtained under and by virtue of the provisions hereof. No action shall be commenced under the provisions hereof after the expiration of six months from the date of the alleged damages. § 17, c. 69, 1895.

§ 1563. Stock must be branded. All droves of horses, mules, cattle or sheep which may hereafter be driven from any other state or territory of the United States, or any foreign country, into or through any county of this state, shall be plainly branded or marked with one uniform brand or mark. All such horses, mules and cattle shall be branded with one distinct ranch or road brand of the owner so as to show distinctly in such place as the owner may adopt. All such sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily should they become intermingled with other flocks of sheep in this state. §§ 1-3, c. 50, 1895.

§ 1564. Fine. Any owner or person in charge of such drove of stock which may be driven into or through this state, who shall fail to comply with the provisions of the last section shall be fined in a sum not less than fifty nor more than three hundred dollars, together with costs of suit. § 4, c. 50, 1895.

§ 1565. Duties of county auditor and sheriff. It shall be the special duty of the county auditor, sheriff and any constable of each and every county of this state to enforce the provisions of the last two sections. § 5, c. 50, 1895.

SHEEP HUSBANDRY.

§ 1, c. 157, 1890.
§ 1, c. 71, 1891.

§ 1566. Bounty for killing wolves. The county commissioners of each county shall, upon the petition of twenty-five stock raisers of such county, offer a bounty not to exceed three dollars and not less than one dollar for each wolf or coyote killed within the limits of their county.

§ 2, c. 157, 1890.
am'd.

§ 1567. Claimant to make affidavit and produce scalp. Before payment of such bounty the applicant therefor must subscribe and make oath before the county auditor of the county in which the wolf or coyote was killed, setting forth that the wolf or coyote was killed in such county, giving the date thereof, and by whom, and that the two ears of the scalp thereof which are produced before such county auditor are the ears of such wolf or coyote. No claim shall be allowed unless the applicant exhibits and furnishes to such county auditor at the time of making such affidavit, the two ears of the wolf or coyote killed, attached to such skin, which shall then and there in the presence of such county auditor be detached from such wolf or coyote skin.

§ 3, c. 157, 1890.
am'd.

§ 1568. Auditor to retain affidavit. Destruction of scalp. The county auditor shall retain such affidavit until the next regular meeting of the board of county commissioners, when the board shall audit the claim and order a warrant drawn upon the county treasurer for the bounty in favor of the person killing such wolf or coyote. The county treasurer is further required forthwith to destroy such ears by burning the same.

§ 9, c. 155, 1890.
am'd.

§ 1569. When dog may be killed. If any person shall discover any dog in the act of killing, wounding, or chasing sheep in this state, or shall discover any dog under such circumstances as satisfactorily to show that it has been recently engaged in killing or chasing sheep, such person is authorized immediately to pursue and kill such dog.

§ 8, c. 155, 1890.
am'd.

§ 1570. Owner of dog liable. The owner of any dog shall be liable in a civil action for all damages that may accrue to any person by reason of such dog's killing, wounding or chasing any sheep or other domestic animal belonging to such person. No exemption shall be allowed in favor of any person against whom a judgment has been recovered under the provisions of this section.

ESTRAYS.

§§ 1,2, c. 66, 1890.

§ 1571. By whom and when taken up. No person shall take up an estray animal except in the county wherein he resides and is a householder, nor unless such estray is found in the vicinity of his place of residence, nor take up an estray animal mentioned in the next section between the first day of November and the thirty-first day of March, inclusive, unless the same is found trespassing upon the premises or within the inclosure of the person taking up the same.

§ 3, c. 66, 1890.

§ 1572. Notice of taking up estray. Each person taking up an estray horse, mare, colt, mule, ass or any neat cattle, sheep, hog or goat, shall within fifteen days thereafter, give notice of the finding and taking up of such animal, by publishing a notice three times in a weekly newspaper, if there is such paper published in the county; if not, in the nearest newspaper, which advertisement shall give a description of such estray, and the marks and brands thereon. Any person

taking up property as herein provided who fails to advertise as aforesaid, shall be guilty of a misdemeanor.

§ 1573. **Official estray paper of the state.** It shall be the duty of such newspaper to transmit, if such property is uncalled for while being published in a local paper, the third insertion of such advertisement to such newspaper published weekly in the state as the governor shall designate as the official newspaper, in which all estray notices of the state shall be published once, and any failure on the part of the proprietor of such local paper so to do shall be a misdemeanor. § 4, c. 66, 1890.

§ 1574. **Filing estray paper. Payment of fees.** It shall be the duty of the official estray paper to transmit one copy weekly to the office of the county auditor of each county in the state, and the county auditor shall keep such copies on file in his office, and the board of county commissioners of each county shall on the first Monday in January of each year appropriate the sum of five dollars to pay the official estray paper for such publication. § 5, 6, c. 66, 1890.

§ 1575. **Owner may take estray, when. Arbitration.** Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray may go before a justice of the peace in the county and such claimant shall make affidavit in writing setting forth his name and place of residence and that he is the actual owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant on payment of all fees advanced by him and the actual cost of caring for and keeping such estray. If the persons cannot agree as to the amount of such charges the owner of the animal and person taking up such estray shall each choose one disinterested freeholder as arbitrator, and the two so chosen shall choose a third person living in the vicinity where the estray was taken up. The amount assessed by such arbitrators shall be final. § 7, 8, c. 66, 1890. am'd.

§ 1576. **When title of estray vests in finder.** If such estray shall not be claimed and taken away within one year after advertisement thereof in such official newspaper, and if the person taking up such estray shall have caused the same to be duly advertised as herein provided, and shall not in any respect have violated the provisions of this article, the property therein shall immediately vest in the person taking the same up; provided, the appraised value of such estray does not exceed fifty dollars. § 9, c. 66, 1890.

§ 1577. **Appraisal.** The person taking up such estray shall notify the board of county commissioners to appraise or appoint some suitable person whose duty it shall be to appraise the value of such estray. § 10, c. 66, 1890.

§ 1578. **Fees for keeping estrays.** Any person taking up estrays may charge for actual time employed and for actual damage done to his crops. He shall also be allowed his actual cost of feeding and caring for such stock. § 11, c. 66, 1890.

§ 1579. **In case of two or more animals.** If two or more animals are taken up at the same time by the same person, they shall be enumerated in the same advertisement, and the same fees are allowed as for the advertisement or appraisal of one estray. § 12, c. 66, 1890. am'd.

§ 1580. **Sale. Deposit of proceeds.** If the appraised value of any estray exceeds fifty dollars and the same is not called for within one year after the advertisement in the official estray paper, § 13, 14, c. 66, 1890.

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 notice 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 notice of such sale to be published three times in a weekly newspaper if there is one published in the county, and on the appointed day the person taking up such estray shall have the same present at the place fixed by the justice, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray and caring for and keeping the same, to be fixed by such justice, and the fees advanced for the appraisement and advertisement of such estray as herein provided, and after deducting the fees allowed such justice for such sale and the advertisement thereof, the residue of the proceeds of such sale shall be paid to the county treasurer who shall receipt to the justice therefor. 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 shall within such period appear before the board of county commissioners and establish his title to such estray, such board shall order the amount so paid into the treasury to be paid to such owner. If no such owner appears within six months after the deposit of such 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 money.

§ 15, c. 66, 1890.
am'd.

§ 1581. Record of sold estray. Whenever any sum of money is paid into the county treasury under the provisions of the last section the justice paying the same shall deliver to the county treasurer a certificate setting forth the description of the estray from the sale of which the same was obtained and the marks and brands of such estray and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall be filed by the county treasurer and preserved in his office.

§ 16, c. 66, 1890.

§ 1582. Fees, how paid and collected. The fees of the justice, and for advertising and appraisers, shall be paid by the person taking up the estray, and 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.

§ 17, c. 66, 1890.
am'd.

§ 1583. Penalty for violation of this act. If any person not authorized so to do shall take up any estray or lost goods or if any person taking up such estray or lost goods shall willfully neglect to cause the same to be advertised as herein provided, or shall fail to feed sufficiently or properly care for the same, such person shall be liable to the owner thereof for all damages.

§ 18, c. 66, 1890.

§ 1584. Liability in case of death of estray. If any estray after being duly advertised as herein provided, shall, without fault of the person taking up the same, die or be stolen or escape and wander away, the person taking up the same shall not be responsible therefor.

§ 19, c. 66, 1890.

§ 1585. Other personal property governed by this act. The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highways or in any other place shall be the same as herein provided for estrays.

CRUELTY TO ANIMALS.

§ 1586. Agent to investigate. Appointment and duties of. §§ 1, 2, c. 47, 1892.

The governor shall appoint a discreet and suitable person whose duty it shall be to investigate all cases of violation of the laws against cruelty to animals of which information can be obtained and bring the facts relating thereto before the proper authorities and it shall be the duty of such person to organize humane societies in different places in the state, where it can be done, whose members shall pledge themselves to the use of all reasonable means for the enforcement of the laws relating to cruelty to animals. It shall be the duty of the state's attorneys in this state to aid and co-operate with such person in the enforcement of such laws.

§ 1587. Expenses. Appropriation. The person so appointed shall act without compensation further than the payment of his actual expenses incurred. The state auditor shall issue warrants for such expenses upon presentation of itemized and verified accounts therefor, and there is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of five hundred dollars annually for the payment of such expenses. § 3, c. 47, 1893.

TEXAS OR CHEROKEE CATTLE.

§ 1588. When unlawful to import or own. It shall be unlawful for any person, railroad company or other corporation or association: §§ 1, 2, c. 111, 1883.

1. To bring into this state any Texas or Cherokee cattle, except between the first day of November of each year and the first day of February following; or,

2. To own or have in possession or control within this state 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.

§ 1589. Penalty for violation. Any person who brings into this state or causes to be brought therein, any Texas or Cherokee cattle, except at the time prescribed in section 1588 or who shall own, possess or control any such cattle except as allowed in the preceding section, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding ten thousand dollars nor less than two hundred dollars, and in addition thereto may be imprisoned in the penitentiary for a period not exceeding three years. Any railroad conductor or employee, agent or officer of any railroad company who brings any such cattle into this state upon any railroad or vessel connected with such railroad, or who carries 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. § 3, c. 111, 1883. am'd.

§ 1590. Who liable for damage caused by such cattle. Whenever in any case any damage is occasioned to any person, resulting in any manner from any such Texas or Cherokee cattle having been brought into this state at any time by any person, railroad company or other corporation or association, then such person so bringing into, or owning, possessing or controlling such cattle in this state shall be liable jointly and severally to any person who may suffer § 3, c. 111, 1883. am'd.

loss or damage by reason of such bringing into or conveying through, possessing, owning or controlling within the state any such cattle; and in any action for the recovery of damages for any loss or damage which may be sustained by any person from any such cattle, it shall be sufficient for the plaintiff to show that the injury of which he complains arose from any such Texas or Cherokee cattle which may have been owned or had in possession or brought into this 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 complains accrued while any such Texas or Cherokee cattle were in the possession or ownership or control of any such defendant, it being the intention of this section to make all persons liable in the first instance for any injury which may arise from disease spreading or communicating from such Texas or Cherokee cattle so brought into, owned, possessed or controlled by them in this state.

§ 7, c. 111, 1883.

§ 1591. What no defense. Proof necessary to recovery. The right to bring into this state such cattle between the first day of November 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 the right to own, possess or control any such cattle in any case be a 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 for any loss or injury which may arise or accrue to any person 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 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 be prima facie evidence of plaintiff's right to recover. And it shall be competent in the trial of such actions for witnesses to give their opinion as to whether or not any such Texas or Cherokee cattle caused the injury complained of.

§ 8, c. 111, 1883.

§ 1592. Proceedings when Texas cattle are spreading disease. 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 cattle are spreading or communicating disease among native or domestic cattle within this state, and the name of the owner or person in whose possession or control such Texas or Cherokee cattle may be, forthwith to issue a warrant to any sheriff or constable of the county 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 found in the possession of such cattle, to appear before such judge or justice of the peace forthwith and show cause why such cattle should not be impounded until the first day of November following, and after allowing the parties a reasonable time to be heard, such judge or justice shall proceed to hear and determine whether such 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 cattle to impound

them and keep them by themselves until after the first day of November following, when it shall be the duty of the officer in charge of such cattle to present to the owner or person entitled to the possession thereof a sworn statement of the costs of taking, keeping and impounding such cattle, including the costs 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.

§ 1593. Texas cattle defined. Texas or Cherokee cattle as mentioned in the foregoing sections 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 hereof; 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 state subject to the provisions hereof, 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 such railroad. § 9, c. 111, 1883.

ARTICLE 7. — DISTRICT VETERINARIANS.

§ 1594. State veterinarian to take oath. The professor of veterinary science of the state agricultural college is made chief state veterinarian, who shall serve as such without salary, and who shall upon entering upon his duties take an oath well and truly to perform all the duties required of him by law, which said oath shall be taken before any judge of a district court or notary public within the state, and shall be filed with the secretary of state. § 1, c. 35, 1895.

§ 1595. Division of state into districts. The state shall be divided into seven veterinarian districts, in each of which there shall be appointed by the governor, by and with the advice and consent of the senate, one competent veterinarian, who shall be known as the district veterinarian, who shall hold his office for a term of two years from the date of his appointment unless sooner removed for cause, and who upon entering upon his duties shall take an oath well and truly to perform his duties as provided by law, which oath shall be taken before any judge of the district court or notary public within the district of the state for which he is appointed, and shall be filed with the secretary of state. § 2, c. 35, 1895.

§ 1596. Districts defined. District number one shall consist of the first judicial district. § 3, c. 35, 1895.

District number two shall consist of the second judicial district.

District number three shall consist of the third judicial district.

District number four shall consist of the fourth judicial district.

District number five shall consist of the fifth judicial district.

District number six shall consist of the sixth judicial district.

District number seven shall consist of the seventh judicial district.

§ 4, c. 35, 1895.

§ 1597. Duties of chief veterinarian. The duties of the chief state veterinarian shall be to ascertain by personal examination, or through reports from the district veterinarians, in such manner as he shall prescribe, all information that he can obtain regarding the existence of contagious, infectious and epidemic diseases in the state. He shall also make a complete and permanent record of all reports of the district veterinarian; shall make an examination of all diseased animals or portions thereof that may be forwarded to him by the district veterinarians, and upon completion of such examination shall instruct the district veterinarians in such way as he may deem proper in regard to the treatment of similar cases. It shall also be his duty to furnish material as far as lies in his power for the diagnosis of contagious diseases, and instruction as to its uses. In case remedies are discovered for the prevention or cure of contagious diseases such as glanders, tuberculosis, anthrax, hog cholera, foot and mouth diseases and foot rot, it shall be his duty to furnish the district veterinarians, or any person he may see fit to appoint, the remedies so discovered with full directions for application. He shall also be empowered to make quarantine regulations and enforce the same after the approval of the governor. He shall further prescribe, with the consent of the governor, the rules and regulations necessary to carry out the purposes of this article.

§ 2, c. 125, 1891.
§ 5, c. 35, 1895.

§ 1598. Duties of district veterinarians. The duties of the district veterinarian shall be:

1. To investigate in person any and all cases of contagious, infectious and epidemic diseases among cattle, horses, mules, sheep, asses and other domestic animals within his district of which he may have knowledge, and which may be brought to his notice by any resident, or any other person, in any locality within his district where such disease may exist, and it shall also be his duty in the absence of specific information to make visits of inspection to any locality within his district where he may have reason to believe that there are contagious or infectious diseases existing among such domestic animals.

2. To seize and inspect in person at the state line bordering on his district any horses, mules, cattle, asses, sheep or other domestic animals, which may be unloaded temporarily or consigned to any point within his district, when the owner, agent or person in charge thereof shall not upon demand produce certificates of health of such animals satisfactory to him, from a duly authorized state or district veterinarian or examiner of the state from which said animals have been shipped.

3. To examine in person, as often as he may deem reasonable, all pens, inclosures and cars within the district, within which domestic animals may be confined or transported, and to require the owner, agent or person in charge of all such pens, inclosures and cars to keep the same in proper sanitary condition.

4. To require in person the owner, agent or person in charge of all pens, inclosures or cars, within which domestic animals may be confined or transported, to cleanse, fumigate and disinfect the same within two days after written notice, when, in his opinion, such cleansing, fumigating and disinfection shall be necessary for the prevention of the spread or outbreak of any contagious or infectious disease among such animals.

5. To seize and inspect all domestic animals coming into and remaining within his district without a certificate of the health of such animals from a duly authorized state or district veterinarian or examiner of the state from which said animals have been shipped, and before such animals shall be allowed by the district veterinarian to be transported into and to remain within the state. In addition to such inspection, he shall in person require from the owner, agent or person in charge of such animals an affidavit to the effect that such animals have not been exposed to any infectious or contagious disease for a period of at least ninety days prior to the making of such affidavit, and, in case the district veterinarian shall have reason to believe that any domestic animals have been exposed to or have contracted any infectious or contagious disease, it shall be his duty to seize and inspect such animals, notwithstanding any certificate of their health by any veterinarian or examiner of any other state, and report the same to the chief state veterinarian.

§ 1599. Seizure of animals. Fees. Whenever any domestic animals are seized and inspected under the provisions of this article by the district veterinarian while such animals are being transported in cars, on shipboard or brought into the state in any other manner, the district veterinarian making such seizure and inspection shall require the owner, agent or person in charge of such animals to pay one-half cent each for the inspection of sheep and twenty-five cents each for all other animals named herein. All money so collected shall be immediately transmitted to the chief state veterinarian, together with a detailed report of the seizure and inspection, and it shall be the duty of the chief state veterinarian to transmit monthly all money collected as inspection fees under the provisions of this article to the state treasurer, who shall receipt to the chief state veterinarian. All such fees shall be paid by the state treasurer into the general fund; provided, that no inspection shall be made by any district veterinarian of any domestic animals in transit through the state without special instructions from the chief state veterinarian, where the owner, agent or person in charge thereof shall produce certificates of the health of such animals from a duly authorized veterinarian or examiner of the state from which said animals have been shipped.

§ 5, c. 125, 1891.
§ 6, c. 35, 1895.

§ 1600. Quarantine. In all cases of contagious or infectious diseases among domestic animals in this state the district veterinarian shall have authority to order the quarantine of the infected premises and animals within his district, and upon such order immediately to report the same to the chief state veterinarian, and in case such disease shall become epidemic in any locality within the state it shall be the duty of the district veterinarian of the district where such epidemic may exist or become known, immediately to notify the chief state veterinarian, who shall thereupon have authority to enforce a permanent quarantine and prevent the removal therefrom of any animals of the kind among which said epidemic exists until the district veterinarian of such district shall report such animals to be in healthy condition, and upon such report a certificate shall be issued by the chief state veterinarian permitting the removal of the animals that are reported to be healthy. The expense of holding and taking care of all animals quarantined under the provisions of this article shall be paid by the owner, agent or person in charge of the same.

§ 6, c. 125, 1891.
§ 7, c. 35, 1895.

§ 7, c. 125, 1891.
§ 8, c. 35, 1895.

§ 1601. Epidemic diseases, notice of. In case of any epidemic diseases where premises and animals have been previously quarantined by order of the chief state veterinarian or by the district veterinarian as hereinbefore provided, the district veterinarian is further authorized and empowered, when in his judgment it is necessary, to order that any and all diseased animals shall be quarantined at such places and in such manner as he may direct and held in such quarantine until released by certificate of the chief state veterinarian as provided in the preceding section, and in case the district veterinarian shall find that any one or more of the animals so quarantined is so diseased that it becomes necessary to destroy the same to prevent the spread of such disease to other animals, he shall at once serve, in person, a written notice of his intention to destroy the same, upon the owner, agent or person in charge of the animals so quarantined and condemned, and if such owner, agent or person in charge of such animals feels aggrieved by the decision of the district veterinarian, and shall desire a consultation of veterinarians, notice in writing to that effect must within twenty-four hours thereafter be served upon the district veterinarian issuing the notice, and it is made the duty of the resident district veterinarian to summon two district veterinarians from adjoining districts to appear and assist in diagnosing and pronouncing upon the character of the disease with which said animal is supposed to be infected, and in case all three district veterinarians, or any two of them, declare said disease to be contagious or epidemic in its character, and that such animal or animals should be destroyed to prevent the spread of such disease to other animals, the district veterinarian of the district wherein the animal is located shall immediately slaughter such animal, and not otherwise, and shall then make in duplicate a written statement, setting forth distinctly the nature of the disease for which such animal was condemned and destroyed, to be served on each owner thereof, the original of each order to be filed by the district veterinarian with the chief veterinarian and the duplicate thereof given to the owner, agent or person in charge of said condemned animals. It shall be the duty of the owner, agent or person in charge of any and all animals slaughtered under the provisions of this article immediately to bury the carcass of such slaughtered animal in a trench at least six feet in depth and at least four feet beneath the surface of the ground, or burn and consume such carcass under the direction of the district veterinarian; and it is made the duty of the district veterinarian, in person, to require the owner, agent or person in charge of such slaughtered animal within his district immediately to bury or burn under his personal supervision the carcass of such slaughtered animal as herein provided, except in all cases where the cause of death is due to anthrax, when it shall immediately be burned.

§ 8, c. 125, 1891.
§ 9, c. 35, 1895.

§ 1602. Report of district veterinarians. Each district veterinarian shall make a report at the end of every three months, and at such other times as may be required, to the chief state veterinarian of all matters connected with his work, the forms of such reports to be furnished by the chief state veterinarian and the chief state veterinarian shall transmit to the several boards of county commissioners, as often as he deems necessary, such parts of said reports as may be of general interest to the breeders of live stock, and he 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 outbreak of disease in any locality, its causes and the measures adopted to check it.

§ 1603. Certificate of health. Fine and imprisonment. It shall be the duty of any owner, agent or person in charge of any cattle, horses, mules, asses, sheep or other domestic animals, where such owner, agent or person in charge thereof intends to bring any such animals into the state for distribution, sale, transportation, or permanent location therein, without a certificate of health from a duly authorized veterinarian or examiner of the state from which such animals are shipped, to give notice in writing to the district veterinarian of the district of the state bordering on the state line from which said animals are brought, at least three days before such animals are brought into this state beyond the quarantine station at the state line of such district, and it shall be the duty of any person who shall have knowledge or suspect that there is upon his premises or upon the public domain, any case of contagious, infectious or epidemic disease among domestic animals, immediately to report the same to the district veterinarian of the district wherein such animals or cattle may be, and a failure so to do, or any attempt to conceal the existence of such diseases or a failure to give notice, before passing the quarantine station at the state line of said district, as in this section required, or willfully or maliciously to obstruct or resist or disobey any order issued by the chief state veterinarian or the district veterinarian, or in any way interfere in the discharge of their duties, as set forth in this article, shall be deemed a misdemeanor, and any person who shall be convicted of any of the above acts or omissions shall be fined not less than fifty dollars nor more than two thousand dollars for each and every such offense; and upon conviction of such offense a second time, shall, in addition to the above named fine, be imprisoned in the county jail of the county wherein convicted, or as otherwise provided by law, for a term of not less than ninety days nor more than one year.

§ 9, c. 125, 1891.
§ 10, c. 35, 1895.

§ 1604. Duty of owners of stock. Animals in transit. The following regulations shall be observed in all cases of disease covered by this article:

§ 10, c. 125, 1891.
§ 11, c. 35, 1895.

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 any 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 person receiving the animal.

2. It shall be unlawful to kill for butcher purposes any such animal, or 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 of not less than one hundred dollars; and, in addition to such fine, be imprisoned in the county jail for a term of not less than ninety days nor more than one year. It shall be the duty of the owner, agent or person having in charge any animal infected or suspected of being infected with any contagious or infectious disease, immediately to confine the same in a safe place, isolated from all other animals, and with all necessary restrictions to prevent the dissemination of the disease until the arrival of the district veterinarian of the district wherein the same may be at the time. The above regulations shall apply as well to animals in transit through the state as to those resident therein, and the district veterinarian shall have full authority, within his district, to examine whether in yard, pasture or stables, or upon the public domain, all animals passing through

the state, within his district or any part of it, and on detection or suspicion of disease, take possession of and treat and dispose of such animals in the same manner as is prescribed for animals resident within the state.

§ 11, c. 125, 1891.
§ 12, c. 35, 1895.

§ 1605. Compensation. Bonds. Each district veterinarian shall receive for his services the sum of six hundred dollars per annum. The payment of such salary shall be made from any funds in the state treasury not otherwise appropriated, monthly, upon itemized vouchers signed and sworn to by each for his separate district and submitted to the state auditor, who shall draw warrants upon the state treasurer for the amount thereof, if found correct, separately. No person shall be competent under this article to receive the appointment of district veterinarian who is not at the date of his appointment a graduate in good standing of a recognized college of veterinary surgeons, or who has not practiced veterinary surgery within this state for at least five years. Before entering upon the discharge of his duties he shall give a bond to the state of North Dakota, with good and sufficient surety, in the sum of two thousand dollars, conditioned on the proper discharge of the same. No constructive mileage shall be paid under this article, nor shall the district veterinarian receive any mileage except when called in cases of consultation as hereinbefore provided, when he shall receive actual expenses paid by him.

§ 12, c. 125, 1891.
§ 13, c. 35, 1895.

§ 1606. Places of quarantine. The district veterinarians shall select the place or places within their respective districts at which all animals referred to herein shall be quarantined.

§ 13, c. 125, 1891.
§ 14, c. 35, 1895.

§ 1607. Fines. All fines collected under the provisions of this article shall be paid into the general fund of the state.

§ 14, c. 125, 1891.
§ 15, c. 35, 1895.

§ 1608. Duty of attorney general. It is the duty of the attorney general or the state's attorney of the respective counties of the veterinarian district, to prosecute any case complained of by the district veterinarian of such district for prosecution in any justice's or district court within the jurisdiction of which any violation of this article may have occurred, and on conviction of violation of any of the provisions of this article, the court, in addition to the penalties prescribed by law, shall add thereto such reasonable attorney's fees, as may be determined to be just in the premises.

§ 15, c. 125, 1891.
§ 16, c. 35, 1895.

§ 1609. Duty of sheep inspectors. It shall, in addition to their duties already defined by law, be the duty of all sheep inspectors, and the district veterinarian, who is hereby authorized to appoint such inspectors, shall require all sheep inspectors within his district, to report to him in writing, at the end of each calendar month, any knowledge or information such sheep inspectors may possess relative to any diseased sheep which may be within their own or adjacent counties within the veterinarian district of which said county or adjacent counties may form a part, and the district veterinarian shall report to the chief veterinarian all the information that he obtains from the reports received from the sheep inspectors; and whenever, in the opinion of the district veterinarian, any sheep inspector within his district is incompetent, or neglects or refuses to attend in a proper manner to his duties, the district veterinarian of such district shall take charge of any diseased sheep in such county, and dip and treat them in the manner provided for in the law relating to sheep inspectors, and when such action shall become necessary, he shall report the same to the chief state veterinarian, who shall give such assistance as

is in his power, and, in addition thereto the district veterinarian shall, when such sheep inspector is incompetent or neglects to perform his duties remove said inspector and appoint some competent person in his place. The owner, agent or person in charge of such sheep shall be required by the district veterinarian, upon his performance of duty as set forth in this section, to pay a fee of five dollars per day, together with the necessary expenses, and said fees shall be a lien upon the sheep inspected, subject to foreclosure the same as chattel mortgages. All fees or moneys collected by the district veterinarian under the provisions of this article shall be remitted, turned over and receipted for the same as other funds that may pass through his hands as prescribed by section 1599.

§ 1610. Jurisdiction of inspector. In all the counties of this state where a sheep inspector has been or may be appointed as provided for by law, the resident sheep therein shall be under the supervision and inspection of such sheep inspector; provided, that upon a written application signed by not less than three sheep owners the district veterinarian shall visit such county and take such authority or give such directions as in his judgment is necessary. § 16, c. 125, 1891.
§ 17, c. 35, 1895.

§ 1611. Inspector's compensation. The inspector shall receive for his services five dollars per day while necessarily employed in inspecting, which shall be paid out of the county general fund in the same manner and form as claims against the county are paid; provided, that the board of county commissioners shall require such sheep inspector to present an itemized statement of the number of sheep inspected and the number of days actually employed in the performance of his official duties, such statement to be approved by the district veterinarian of the district in which such inspector is engaged. § 18, c. 35, 1895.

§ 1612. State veterinarian, additional duties. In addition to the duties of the chief state veterinarian hereinbefore prescribed, he shall make an annual report to the governor on or before the first day of December of all matters connected with his work, and in addition thereto may, from time to time, as in his judgment seems best, publish bulletins for general distribution, giving information as to the existence of animal diseases in the state, and such suggestions in addition thereto as to the care and treatment as he thinks proper. § 19, c. 35, 1895.

§ 1613. Appropriation. For the purpose of carrying out the provisions of this article as herein set forth, there shall be appropriated out of any money in the state treasury not otherwise appropriated, an annual sum of thirty-six hundred dollars with which to pay the salaries of the district veterinarians, and the further annual amount of five hundred dollars for stationery, clerk hire and traveling and other necessary expenses of the chief state veterinarian. § 20, c. 35, 1895.

§ 1614. Serious outbreaks of diseases. In case of any serious outbreak of any contagious, infectious or epidemic diseases among domestic animals, which cannot be supervised by the district veterinarian, the chief state veterinarian shall at once notify the governor, who shall thereupon appoint a sufficient number of deputies to perform the required duties at such compensation as he may deem proper, not to exceed five dollars per day for the actual time employed, the same to be paid out of the general fund of the state upon vouchers duly approved by the governor and the chief state veterinarian. § 21, c. 35, 1895.

ARTICLE 8.—STATE BOARD OF VETERINARY MEDICAL EXAMINERS.

§§ 1, 2, c. 113,
1895.

§ 1615. Qualifications of veterinarians. Each person practicing veterinary medicine, surgery or dentistry in any of its departments in this state, shall possess the qualifications required by this article; provided, that any person who has practiced veterinary medicine, surgery or dentistry as a profession in this state for three years immediately preceding the passage and approval of this article, and who shall be a citizen of the United States, or shall have declared his intention to become such, shall be deemed eligible to registration, and shall receive a certificate upon presentation of a sworn affidavit and letters of recommendation from five reputable freeholders in his locality, or upon presentation of a diploma from a legally authorized veterinary school, college or university, if made before July first, 1895.

§ 3, c. 113, 1895.

§ 1616. Board of examiners, how appointed. Term. The governor shall appoint a board of examiners within thirty days after the passage of this article to be known as the state board of veterinary medical examiners. Such board shall consist of three practicing veterinarians, who shall each be the holder of a diploma granted by a legally authorized veterinary school, college or university, who shall hold office, one for one year, one for two years, and one for three years, after such appointment, or until their successors are appointed. Thereafter, each year, the governor shall appoint one member of said board to fill the vacancy occasioned by the expiration of the term of office of those previously appointed, and is further authorized to fill such vacancies as may occur.

§§ 4, 6, c. 113,
1895.

§ 1617. Organization of board. Said board shall elect a president, secretary and treasurer. It shall have a common seal, and the president and secretary shall have power to administer oaths. Said board shall hold meetings for the examination of candidates, on the second Wednesday of April and October of each year, and such other meetings as may be deemed necessary, at such time and place as the board may appoint, no session to exceed two days. The board shall issue a certificate of qualification to all applicants who shall pass the required examination, and who shall be citizens of the United States, or shall have legally declared their intention to become such, and to all applicants who are eligible to registration under section 1615, signed by the president and secretary of the board. Such certificate or diploma shall be conclusive as to the right of the lawful holder of the same to practice veterinary medicine, surgery or dentistry in this state. Said board shall keep a record of all the proceedings thereof, and also a record or register of each applicant for a license, together with his age, name and time spent in the study and practice of veterinary medicine, surgery or dentistry; and if a graduate, the name and location of the school, college or university granting such diploma. Said books and records shall be prima facie evidence of all the matter therein recorded.

§ 5, c. 113, 1895.

§ 1618. Permit to practice. Any person wishing to practice veterinary medicine, surgery or dentistry, who is qualified under section 1621, may apply to the president of the board of examiners for a permit to practice. The president shall upon payment of five dollars, if satisfied that the applicant is qualified and a suitable person, issue to him a permit to practice until the next meeting of the board, and such permit shall have the same force as a certificate from the board,

but shall expire upon the adjournment of the next meeting of the board of examiners.

§ 1619. **Diplomas and certificates.** Persons presenting diplomas or certificates for registration, shall pay to the treasurer of said board a fee of ten dollars in advance; and the fees received by said board shall be paid over to the state treasurer within thirty days after receipt of same. Said fees shall constitute a special fund for the payment of the expenses of said board of examiners. Each member of said board shall receive from the state treasury all necessary traveling expenses actually incurred in attending such meetings. The secretary of the board shall certify to the state auditor after each meeting of the board the amount due each member for necessary expenses in attending such meetings, and other necessary expenses of the board. The state auditor shall thereupon issue his warrant on the state treasurer for such sum provided there has been a sufficient amount paid into the treasury in fees to redeem said warrants; but if there is not an amount equal to said certified expenses to the credit of such fund, he shall issue his warrant for the amount in the said special fund and deficiencies in the payment of said expenses may be made up from subsequent receipts. § 7, c. 113, 1895.

§ 1620. **Misdemeanor to practice, etc., when.** Any person who either: §§ 8, 9, c. 113, 1895.

1. Practices veterinary medicine, surgery or dentistry in this state without compliance with the provisions of this article; or,

2. Willfully and falsely claims or pretends to have or hold a certificate of registration issued by such board; or,

3. Willfully and falsely, with intent to deceive the public, claims or pretends to be a graduate of, or to hold a diploma granted by a legally authorized veterinary school, college or university, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than fifty nor more than one hundred dollars, and in case of non-payment of such fine, the person so offending shall be liable to imprisonment for a period not exceeding six months. All fines received under this article shall be paid into the common school fund of the county in which such conviction takes place.

§ 1621. **Examination.** All persons commencing the practice of veterinary medicine, surgery, or dentistry in this state after the passage and approval of this act, shall be graduates of a legally authorized veterinary school, college or university, and shall subject themselves to such examination as the board may require. § 10, c. 113, 1895.

§ 1622. **Certificates recorded.** Every person holding a certificate from the board of examiners shall have it recorded in the office of the register of deeds in the county in which he resides, within thirty days after the date of said certificate, and the record shall be indorsed thereon. Any person removing to another county to practice shall record within thirty days the certificate in a like manner in the county to which he removes, and the holder of the certificate shall pay to the register of deeds a fee of one dollar for making the record. § 11, c. 113, 1895.

§ 1623. **Gratuitous services.** Gratuitous service in cases of emergency in the dehorning of cattle, or castration of animals, shall not be construed as coming within the meaning of this article. § 12, c. 113, 1895.

§ 1624. **Witnesses. Expert fees.** Any person complying with the provisions of this article shall be entitled to expert fees as a witness in all civil actions relating to the veterinary profession. § 13, c. 113, 1895.

ARTICLE 9. — GLANDERS.

§ 1. c. 65, 1883.
am'd.

§ 1625. Penalty for having glandered animals in possession. It shall be unlawful for any person 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 person who knowingly owns or possesses or in any manner keeps, uses or controls a glandered animal as aforesaid, shall be deemed guilty of a misdemeanor and shall be punished accordingly and all such diseased animals shall be summarily destroyed as hereinafter provided.

§ 2. c. 65, 1883.
am'd.

§ 1626. Complaint to justice of the peace. Duty of justice. When complaint in writing is made to a justice of the peace of the proper county, verified by oath or affirmation, stating that any person 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, it shall be the duty of the justice upon filing such complaint immediately to cause notice to be served upon the person so owning, possessing, keeping, using or controlling such animal, which notice shall set forth briefly the allegations of the complaint and command such person forthwith to appear before such justice and show cause why such justice shall not issue a warrant for the destruction of such animal, and either the complainant or the person 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 desires, they may cause such person to bring such animal before them for inspection. Upon the conclusion of the trial the court, or jury if trial is 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.

§ 3. c. 65, 1883.

§ 1627. Duty of justice after verdict. In case the verdict of the jury shall be that the complaint is true and that such animal is infected with glanders, the justice shall forthwith direct by warrant that the owner or person having such animal in possession forthwith kill and bury or otherwise destroy the same, which warrant may be served upon such owner or person the same as a summons; and in the case of a corporation, each officer thereof shall be responsible in its behalf for the acts of the corporation, and such service may be made upon any officer thereof.

§ 4. c. 65, 1883.

§ 1628. Penalty for disobeying warrant. If the owner or person having possession of such diseased animal, after having been served with a 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 animal, such animal shall be forthwith killed and buried or otherwise destroyed by order of the 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 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.

§ 1629. Justice to 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, and shall allow and tax all costs of the justice, officers, jurors and witnesses the same as in other cases, together with the fee provided herein for destroying such animal, which costs and fee 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 costs 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 actions, and execution may issue therefor. § 5, c. 65, 1883.

ARTICLE 10. — SHEEP INSPECTORS.

§ 1630. Appointment of sheep inspectors. Term of office. The county commissioners of any organized county, shall upon the presentation of a petition, signed by ten wool growers of such county, appoint a sheep inspector who is acquainted with the diseases to which sheep are subject, and who shall be a resident of the county for which he is appointed, and who shall hold his office for two years, unless sooner removed. Such inspector may appoint as many deputies as he may deem necessary. § 1, c. 116, 1891.

§ 1631. Duty of sheep inspector. It shall be the duty of the sheep inspector whenever he has knowledge or information that any sheep within his jurisdiction have the scab or any other malignant contagious diseases, to inspect such sheep and report in writing the result of his inspection to the district veterinarian, to be filed by him for reference by the county commissioners or any person concerned, and if such disease continues he shall once every four weeks thereafter reinspect such sheep and report in writing the result and treatment, if any, in the same manner until said disease is reported cured. § 2, c. 116, 1891. am'd.

§ 1632. Duty of owner or agent of diseased flock. The owner, or his agent, of any sheep reported by the inspector to be so diseased shall immediately herd them so that they cannot range upon or within one mile of any grounds accustomed to be ranged upon by any other sheep, or shall restrain them from passing over or traveling upon or within one mile of any public highway or road, and in case this cannot be done he shall immediately remove said sheep to a locality where they shall not be permitted to range within less than five miles of any other sheep, and such sheep shall continue to be herded under such restrictions until, upon inspection, they shall be reported free from such disease. § 3, c. 116, 1891.

§ 1633. Oath and bond of inspector. Where recorded. Each inspector before entering upon the duties of his office shall take the oath of office required of other civil officers and shall give bond to the state of North Dakota in the sum of one thousand dollars with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the board of county commissioners, and with the oath indorsed thereon shall be recorded in the office of the county auditor 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 §§ 8, 9, c. 116, 1891.

suit shall be so instituted after more than twelve months have elapsed from the time the cause of action accrued.

§ 10, c. 116, 1891.

§ 1634. When infected sheep dipped. Penalty. 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 the dipping works or other facilities for treating the diseased 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 places 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 fine of not exceeding one hundred dollars.

§ 11, c. 116, 1891.
am'd.

§ 1635. Salary of inspector, how paid. The inspector shall receive for his services five dollars per day while necessarily employed in inspecting, which shall be paid out of the county general fund in the same manner as other claims against the county are paid; but the board of county commissioners shall require such sheep inspector to present an itemized statement duly verified of the number of sheep inspected and the number of days actually employed in the performance of his official duties.

§ 12, c. 116, 1891.

§ 1636. Power of inspectors. In all cases where scab or other contagious diseases are found in a flock of sheep, the sheep inspector is hereby empowered to prescribe what dip or other remedies shall be applied and specify the manner of treatment.

§ 13, c. 116, 1891.

§ 1637. Owners must notify inspectors. In all cases where sheep are brought into any county of this state the owner or person in charge of said sheep shall notify the inspector of the date of the arrival in said county and before being allowed to mingle with other sheep shall be quarantined for a period of not less than forty days, in a location approved of by the sheep inspector of said county; provided, however, where sheep have been ranged for not less than forty days near the county line of the county to which said sheep are to be removed and are known to be free from disease, the provisions of this section shall not apply.

§ 5, c. 136, 1885.

§ 1638. Penalty for violation of. The owner or his agent or employees, of any flock of sheep to be inspected shall afford the inspector all reasonable facilities for making such inspection, and for every violation of any of the provisions of this article such owner or his agent or employees shall be fined not less than ten dollars nor more than three hundred dollars, and every separate day's offense 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 such offense, and any justice of the peace of the county in which the offense is committed shall have jurisdiction thereof, and such inspector shall report all violations of the provisions of this article, of which he has knowledge.

§ 8, c. 135, 1885.

§ 1639. Record of official act of inspector. 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 or removal said record shall be deposited with the register of deeds.

§ 1640. **Fine for false report of inspector.** Whenever a sheep inspector shall willfully or falsely report any sheep subject to disease, he shall be subject to a fine of ten times the amount of the fees charged by him for the inspection, and if he shall willfully or falsely report free from disease any sheep inspected by him that are thus infected, he shall be subject to a penalty of not exceeding three hundred dollars for each offense. § 11. c. 135, 1835.

§ 1641. **Removal of inspector. Cause.** If any sheep inspector shall be found guilty of either of the offenses set forth in the last section, 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 willfully or negligently failed to make the required inspection, or 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 the commissioners to declare such office vacant and to make a new appointment. § 12. c. 135, 1835.

ARTICLE 11. — GAME LAW.

§ 1642. **Game warden, how appointed. Bond. Duties.** There shall be appointed by the governor a state game warden, whose term of office shall be two years, commencing on the first Tuesday in April next succeeding his appointment and until his successor is appointed and qualified. He shall give a bond to be approved by the governor, in the sum of two thousand dollars, conditioned for the faithful performance of his duties. It is the duty of the state game warden to superintend and aid in the enforcement of all laws of this state for the preservation of game therein. He shall appoint deputy game wardens as follows: In each county having less than three thousand inhabitants, one deputy; in each county having more than three thousand and less than seven thousand inhabitants, two deputies; in every other county, three deputies. Each deputy shall be an elector of the county for which he is appointed, and shall hold office at the pleasure of the state game warden.

§ 1643. **Unlawful to hunt without permit.** It shall be unlawful for any nonresident of this state to hunt, kill or wound in this state any of the wild animals or birds mentioned in chapter 72 of the penal code, without having first obtained the permit for nonresidents hereinafter provided for. It shall be unlawful for any resident of this state, either alone or with another or others, to use any dog in hunting, setting, pointing or retrieving any game unless such resident shall hold a permit good at the place where he so uses a dog, as hereinafter provided. Such permits shall be subject to inspection by any person upon demand.

§ 1644. **Permits, forms of.** The state game warden shall cause forms of such permits to be printed which shall be substantially as follows:

State of North Dakota, }
County of..... } ss.

....., a
nonresident of North Dakota, is hereby licensed to hunt in North

Dakota under the provisions and conditions of the game laws thereof until the first day of January next after the date of this permit.

Dated at..... this.....day of....., 189..

County Auditor.

RESIDENT PERMIT.

State of North Dakota, }
County of..... } ss.

a resident of.....county, state of North Dakota, is hereby licensed to hunt in this state with a dog or dogs until the first day of January next after the date hereof.

Dated at.....this.....day of....., 189..

County Auditor.

Such permits shall be indorsed by the state game warden and issued by him to the county auditors of the several counties of the state.

§ 1645. County auditors to issue permits. Fees. The county auditor shall fill out and issue one of such permits to any person applying therefor, on payment of twenty-five dollars if the applicant is a nonresident of the state, and on payment of fifty cents if the applicant is known to the auditor or satisfactorily proved to him to be a resident of the state, and in addition to such charge the auditor shall charge a fee of twenty-five cents for each permit issued by him; provided, that any nonresident who may be carrying on the the cultivation of any lands in the state, not less than one quarter section, shall be entitled to take out a resident permit, whether such nonresident is the owner of the lands so cultivated in whole or in part, or a stockholder in a corporation carrying on such cultivation; provided, further, that such nonresident shall take out such permit in the county where such cultivation is so carried on; provided, however, that nothing in this section shall prohibit a person from hunting on lands of his own during the open season as provided by law. No permit shall be valid unless indorsed by the state game warden, signed by the county auditor and sealed with the county seal. Such permits shall authorize the holder to hunt throughout the state, either with or without a dog. All permits shall expire on the first day of January next after their issuance.

§ 1646. County auditor to report permits and fees. On the first day of November each year, each county auditor shall make a statement to the state game warden showing the number of each kind of permits issued by him during the preceding twelve months, and shall at the same time remit to him that part of the license fees which he is entitled to receive. Not later than November first each year the county auditor shall pay to the deputy game wardens of his county that part of the license fees to which they are entitled.

§ 1647. Powers and duties of game warden and deputies. For the purpose of enforcing the laws of this state for the protection of game, the state game warden and his deputies shall have all the powers conferred by law upon constables. It shall be the duty of each deputy game warden diligently to inform himself of all violations of such laws, and to make report thereof to the state's attorney

who shall forthwith prosecute the same. Upon any conviction had upon such report there shall be paid to the deputy a fee of five dollars to be taxed and collected as a part of the costs in the case.

§ 1648. **Disposition of permit fees.** One-third of all moneys paid for permits issued under section 1645 shall be paid by the county auditor to the state game warden and shall be in full of all compensation to be paid him. Two-thirds of all moneys paid for such permits shall be divided by the county auditor equally among the deputy game wardens of his county and shall be in full of their compensation, except as above provided.

ARTICLE 12.—FISHWAYS.

§ 1649. **Passageway for fish in all dams.** There shall be erected and maintained by the owner of any dam across any stream in this state a fishway at least one foot in depth at the edge of such dam of proper width to allow all fish endeavoring to migrate to the waters of such stream above the dam to pass over the same. Such fishway shall be placed at an angle of not more than thirty degrees, and extend entirely to the running water below the dam, and it shall be protected on each side by an apron at least one foot in height to confine the waters therein. Such fishway shall be constructed under the supervision of the county commissioners of the county where such dams are located, and be located at such place in such dam and built in such manner and of such material as they may direct.

§ 1, c. 60, 1885.
§ 1, c. 55, 1887.

§ 1650. **County commissioners may build fishway, when.** Whenever the owner or occupant of any such dam neglects or refuses to construct such fishway or chute over the same, the commissioners of the county shall proceed on notice to them in writing, made by five freeholders of the county, to let the work of erecting such fishway or chute, and providing material therefor, to the lowest responsible bidder, and all expenses attendant upon the erection or maintenance of the same shall be paid by the owner or occupant of the dam, and shall be recovered in the name of the person building such fishway or chute upon the acceptance of the same by the county commissioners; and if not paid by such dam owners or occupants the same shall become a lien upon such property, and shall be collected as is provided for enforcing mechanic's liens.

§ 2, c. 60, 1885.

ARTICLE 13.—STATE FISH HATCHERY.

§ 1651. **State fish commissioner, duties of.** The state superintendent of irrigation and forestry is hereby constituted the state fish commissioner of North Dakota, whose duty it shall be to act in conjunction with the United States commissioner of fish and fisheries, and otherwise as his judgment may dictate, by stocking the waters of this state with fish, by distributing in suitable parts thereof such fish as he may deem best adapted to furnish cheap and nutritious food for the people; to establish and maintain state fish hatcheries and such fish breeding ponds as he may deem necessary, and to equip and stock the same with fish; to employ suitable agents to take charge of and propagate such young fish and fish eggs as he may require or obtain; to have the entire charge of the fish culture and a general supervision of all the fish of the waters throughout this state and to take such legal steps as shall secure proper protection of

§§ 1,2, c.64, 1895.

the same; provided, that nothing in this article shall be so construed as to make the state liable for the lands, springs or waters secured for state fish hatcheries or fish breeding ponds or for any service rendered by any fish agents or any other person engaged in such work as named in this section.

§ 4, c. 64, 1895.

§ 1652. Duty of peace officer. Every seine, net or other unlawful device used or intended to be used to catch, take, kill or destroy any fish in this state contrary to the laws thereof is forfeited to the state, and it is the duty of every peace officer of this state to seize and destroy any such device whenever the same is being used in violation of this article.

§ 5, c. 64, 1895.

§ 1653. Report of commissioner, when. Two months previous to the meeting of the legislative assembly, the state fish commissioner of North Dakota shall make a report to the governor of this state giving an account of the doings of his office, together with such recommendations as in his judgment may best promote fish culture in this state.

ARTICLE 14.—PRAIRIE FIRES.

GENERAL PROVISIONS.

§ 1, c. 60, Pen.C.

§ 1654. Prairie fires forbidden. If any person shall set or cause to be set on fire any woods, marsh or prairie, or any grass or stubble lands except in the months of July or August, except as hereinafter provided, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten nor more than one thousand dollars, and be imprisoned in the county jail for a period not exceeding six months, or either, or both at the discretion of the court, and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage.

§ 2, c. 60, Pen.C.

§ 1655. Fire permitted, when. For the purpose of destroying any grass or stubble that may be on any piece of land at the time any person commences to break or plow the same, it shall be lawful for such person 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.

§ 3, c. 60, Pen.C.
am'd.

§ 1656. Accidental damages. If any fire, set as provided in the last section shall by accident and without any fault or neglect of the person setting the same, get beyond his control, such person shall be liable as provided in section 1654 for all damages done by such fire, but not otherwise. But if such fire is carelessly, negligently or intentionally permitted to spread beyond the bounds of such strip of land mentioned in the last section, then the person setting such fire shall be liable both civilly and criminally as provided in section 1654.

§ 4, c. 60, Pen.C.
am'd.

§ 1657. Grasshopper destruction. It shall be lawful for any person at any time between the twentieth day of April and the twentieth day of June to set on fire, for the purpose of destroying grasshoppers, any marshes, prairies, grass or stubble lands, owned or occupied by him, or any marshes, prairies, grass or stubble lands adjacent thereto; provided, that the person 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 such notice the time when and place where such fire will be set. Such person shall take all necessary precaution before the setting of such fire, to prevent damage by the same.

§ 1658. Fire limited. Fire set under the provisions of the last section shall not be allowed to spread beyond the control of the person setting the same, and shall be extinguished the same day on which it is set. § 5, c. 60, Pen.C.

§ 1659. Penalty for violation. Any person violating the provisions of the last section shall be liable in a civil action to any person damaged by such fire to the amount of such damage; and in case any person shall negligently, carelessly, willfully, maliciously or intentionally violate the provisions of the last section such person shall be liable both civilly and criminally the same as though he had violated the provisions of section 1654. § 6, c. 60, Pen.C.

§ 1660. Penalty for setting fire to woods or prairies. If any person shall willfully, negligently or carelessly set or cause to be set on fire any woods, marsh or prairie in this state, or if any person having made any camp or other fire shall leave such fire without having thoroughly extinguished the same, so that the fire shall spread and burn any wood, marsh or prairie, the 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 not spread therefrom, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year, or by both in the discretion of the court, and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage. § 1, c. 106, 1881.
§ 1, c. 123, 1887.

§ 1661. Responsibility of persons setting fire for damages. If the ranch, building, improvements, fences, timber, marsh or other property of any person shall be injured or destroyed by any such fire the person who causes or allows the same shall be responsible to the person injured thereby for all damage or injury caused or sustained by reason of such fire. If the cattle range or improvements of any person are injured or destroyed by any such fire, or if the hay upon any such range or the grass growing thereon shall be injured as aforesaid, the person causing or allowing the same shall be responsible to the person owning or claiming the same and injured thereby, for all the damage or injury caused or sustained by reason of any such fire. §§ 2, 3, c. 106, 1881.
am'd.

§ 1662. Proof necessary to sustain claim for damages. In any action instituted in any court to recover damages under the provisions of the foregoing section, it shall not be necessary for the person injured by such fire to allege 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 so injured was in the occupancy or possession of such ranch, building, improvements, fencing, timber or other property, claiming the right to and occupying with cattle any such cattle range, it being the purpose and intention to protect the possession as aforesaid, whether such person has title to such land or not. § 4, c. 106, 1881.
am'd.

- § 1, c. 93, 1891.
am'd. **§ 1663. Tools and appliances.** It shall be lawful for the county commissioners in any county in this state to provide such tools and appliances as may be necessary to aid and assist in making fire breaks to prevent the spread of prairie fires.
- § 2, c. 93, 1891.
am'd. **§ 1664. County divided into districts.** The board of county commissioners shall have power to divide the county into as many districts as may in its judgment be necessary, and each district so formed shall be known and designated as fire district No.; provided, that whenever practicable the road overseer residing in such fire district shall be fire warden, and he shall in addition to his other bond be required to give a bond as such fire warden in the sum of five hundred dollars, with two good and sufficient sureties to be approved by the board of county commissioners, conditioned for the faithful discharge of the duties of such fire warden.
- § 3, c. 93, 1891. **§ 1665. Fire breaks.** The road supervisors shall have the right, and it shall be their duty, whenever in the judgment of the board of county commissioners at any regular meeting fire breaks should be made, to call on any person liable to the payment of road poll tax in their respective districts to come forth with such tools or teams as the road supervisor may direct and work upon such fire breaks at least two days in each year.
- § 4, c. 93, 1891. **§ 1666. Notice to work on fire breaks.** The road supervisor shall give at least three days' notice to all persons liable to road poll tax and living within their respective districts of the time and place when and where they are to appear for work on fire breaks, and with what implements. Each person warned to work may appear in person or by an able bodied substitute, and such person or substitute shall work eight hours in each day. Each person notified and who refuses or neglects to appear as above provided, shall be fined in the sum of twenty-five dollars to be collected as other fines are collected.
- § 5, c. 93, 1891. **§ 1667. Districts, how mapped out.** The fire warden may use his discretion and take advantage of any creek, river or other natural or artificial barrier to prairie fires, and of broken or plowed fields, and may in his judgment map out his district in any form, so that when the fire guards are made a prairie fire may be confined to the smallest possible area consistent with the amount of funds available in his fire district.
- § 6, c. 93, 1891.
am'd. **§ 1668. Legal fire break.** A strip of land plowed or burned, or partly plowed and partly burned, not less than sixty-six feet wide is hereby designated a legal fire break or fire guard.
- § 7, c. 93, 1891. **§ 1669. When prairie may be set on fire.** For the purpose of making a fire guard it shall be lawful to set on fire a strip of prairie not exceeding one hundred feet in width, which shall be protected on each side by a strip of plowing or burning not less than five feet wide, and at such burning there shall not be less than four men present prepared with water and suitable appliances to keep such fire under control.
- § 8, c. 93, 1891. **§ 1670. Appropriation for fire guards.** The board of county commissioners is hereby authorized to expend not to exceed the sum of one thousand dollars annually from the road and bridge fund for the purpose of constructing fire guards.
- § 9, c. 93, 1891. **§ 1671. Warden may summon persons to work.** The fire warden shall have the power to summon all persons liable for highway tax, to work the same in aiding to make fire guards, and they shall have the same credit therefor as if the work had been upon the

highways. The same law as to notice and failure to work, which applies to highways, shall apply to this law.

§ 1672. **Penalty for failure to comply.** The fire warden shall have power to call out a sufficient number of men in case a prairie fire threatens any portion of his fire district, to extinguish or control such fire as far as possible, and to protect property, and any one warned out by the fire warden or under his direction, who refuses or neglects to respond, unless he renders a reasonable excuse, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten nor more than twenty-five dollars. § 10, c. 23, 1891. am'd.

§ 1673. **Railroad companies to burn weeds.** It is the duty of each railroad company within this state whose railroad is operated by steam power, as soon as possible in each year to burn or otherwise destroy all grass, weeds or other combustible matter upon the right of way of such company. § 11, c. 23, 1891.

§ 1674. **Liability for carelessly setting fires.** Each person who willfully, negligently or carelessly sets or causes to be set on fire any woods, hay, weeds or prairie grass shall be guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars or by imprisonment in the county jail not more than one year, or by both in the discretion of the court, and shall also be liable to any person damaged by such fire to the amount of such damage. § 12, c. 23, 1891. am'd.

ARTICLE 15. — BOUNTIES TO MANUFACTURERS.

SPINNING FIBRES.

§ 1675. **Who entitled to benefits.** Any person, company or corporation who shall hereafter make in this state from flax or hemp, grown in this state, long line and spinning fibres, either flax or hemp, and spinning tows, shall be entitled to the benefits of the next section. § 1, c. 77, 1895.

§ 1676. **Bounty to be paid.** There shall be paid from the state treasury as bounty to any person, company or corporation aforesaid, the sum of one dollar for each one hundred pounds of long line and spinning fibres, either flax or hemp, and spinning tows, made or manufactured by said individual, company or corporation in this state from flax or hemp exclusively grown in this state; and said bounty shall be paid annually for the term of five years from the first day of May, 1895, to each individual, company or corporation, entitled to the same under the provisions of this article. § 2, c. 77, 1895.

§ 1677. **Samples inspected. Certificates.** Said fibres and tows, when manufactured, shall be inspected from samples produced or by inspection of said fibres and tows in bulk by a commission, which commission shall consist of one practical flax man, a citizen of this state, and of one of the trustees of the university of North Dakota, each to be named annually by the governor, and of the president of the agricultural college, and in the event the commission or a majority of the members thereof shall be of the opinion that the fibres or tows are of a marketable quality for spinning purposes, they shall give said manufacturer a certificate to that effect, and said certificate shall specify the place where and date when said fibres or tows were manufactured and the number of pounds of fibres or tows of the quality aforesaid, made or produced by said person, company or corporation, and the state auditor, upon the production and surrender of such certificate, shall issue to the person, company or corporation § 3, c. 77, 1895.

named therein, or to his or its order, a warrant on the state treasurer for the amount named in such certificate, and such warrant shall be paid out of any moneys in the state treasury not otherwise appropriated, and said warrant shall also be received in payment of state taxes.

§ 4, c. 77, 1895.

§ 1678. Rules and regulations. Said commission shall not issue any certificates herein provided for until it is satisfied said fibres or tows are of the standard herein named and made exclusively from material grown in this state, and said commission is empowered to make such rules and regulations for said inspection, and call for such evidence and samples to aid them in making said inspections and for carrying out the provisions of this act, as it may deem necessary.

BINDING TWINE.

§ 1, c. 78, 1895.

§ 1679. Who entitled to bounty. All persons, companies or corporations formed or that may be formed in this state for the purpose of manufacturing binding twine from material grown within the state, suitable for binding grain, or any and all individuals engaged, or that may be engaged in such manufacture in this state, shall be entitled to the bounty provided in the next section.

§ 2, c. 78, 1895.

§ 1680. Bounty to be paid. There shall be paid from the state treasury as bounty, to any individual, company or corporation, the sum of one dollar for each one hundred pounds of binding twine manufactured by said individual, company or corporation in this state, suitable for binding grain, and said bounty shall be paid upon each year's results, for the term of five years from the first day of July 1895, to all individuals, companies or corporations entitled to the same under the provisions of the preceding section; provided, that the individual, company or corporation, receiving such bounty shall make a report to the commissioner of agriculture and labor stating the number of pounds of binding twine manufactured under the provisions hereof, which report shall be duly verified by affidavit.

STARCH.

§ 1, c. 79, 1895.

§ 1681. Who entitled to bounty. All persons, companies or corporations formed or that may be formed in this state for the purpose of manufacturing starch from potatoes grown in this state or any and all individuals engaged or that may be engaged in such manufacture in this state shall be entitled to receive the bounty provided in the next section.

§ 2, c. 79, 1895.

§ 1682. Bounty to be paid. There shall be paid out of the state treasury as bounty to any individual, company or corporation the sum of one dollar for each one hundred pounds of starch manufactured by said individual, company or corporation in this state, from potatoes grown therein, and said bounty shall be paid upon each year's results for the term of five years from the first day of September, 1895, to all individuals, companies or corporations entitled to the same under the provisions of the preceding section; provided, that the individual, company or corporation receiving such bounty shall make a report to the commissioner of agriculture and labor, stating the number of pounds of starch manufactured under the provisions hereof, which report shall be duly verified by affidavit.

ARTICLE 16. --- NOXIOUS WEEDS.

§ 1683. **Noxious weeds, manner of destroying.** Each person shall destroy upon all lands which he shall own or occupy, all weeds of the kind known as Canada thistle, cocklebur, mustard, wild oats, French weed and Russian cactus, at such time and in such manner as shall effectually prevent their bearing seed. The time and manner of destroying such weeds shall be prescribed by the board of county commissioners, and the same shall be published at least two weeks in some newspaper in the county, not less than two weeks before the time so prescribed; and if there is no newspaper published in the county then written notice of the same shall be posted, the same as election notices are posted, in lieu of such publications. § 1, c. 91, 1891. am'd.

§ 1684. **Decision to be published.** It shall be the duty of the board of county commissioners, at its regular meeting in April of each year, to determine the time and manner of destroying such noxious weeds, and to cause its determination to be published as provided for in the last section. It shall also cause to be mailed to the chairman of each board of township supervisors and to each overseer of highways and road supervisor in the county, a copy of its proceedings. § 2, c. 91, 1891.

§ 1685. **Road supervisors to destroy weeds. Obtain judgment.** Whenever any individual, firm, or corporation owning or occupying any lands within this state shall neglect or refuse to comply with the provisions of this article for more than ten days after the time prescribed by said board of county commissioners, then it shall be the duty of the overseer or road supervisor, as the case may be, to proceed forthwith to destroy the same in the manner provided for said destruction by the board of county commissioners; it shall also be the duty of such overseers or road supervisors to destroy all such noxious weeds that may grow on the highways and railroad right of ways and school sections and timber culture claims of his road district, and for so doing such overseers or road supervisors shall receive such compensation, payable out of the township treasury or county treasury, as the township board of supervisors or board of county commissioners, upon presentation of his account therefor, verified by oath and specifying by separate items the charges on each piece of land, shall deem reasonable, and the respective accounts, so far as correct, shall be allowed and paid by the township board or board of county commissioners, and upon being so allowed the board of supervisors or board of county commissioners shall take proper proceedings in the district court of the county in which said land is situated to obtain a judgment against the owner of each of said tracts of land for the amount expended on said lands under this article for the destruction of noxious weeds thereon, to pay the expenses of said destruction and all costs that have since accrued under this article and in obtaining judgment therefor, which judgment shall be declared a first lien on said land to be enforced either by sale or as taxes on the lands are collected, at the option of the court. § 1, c. 83, 1895.

§ 1686. **Penalty.** Whenever any overseer of highways or road supervisor shall neglect or refuse to comply with the provisions of this article after having received notice as provided for herein, he shall be subject to a fine of fifty dollars, and it is the duty of the state's attorney to enforce the provisions of this article. § 4, c. 91, 1891.

ARTICLE 17. — RUSSIAN THISTLE AND FRENCH WEED.

- § 1, c. 102, 1895. **§ 1687. Russian thistle and French weed nuisances.** The noxious weeds known as Russian thistle and French weed wherever found in the state, are declared to be a public nuisance, and it is the duty of each person or corporation owning, occupying, leasing or having any lien or interest in any land, without regard to the use to which such land is put, to destroy the same before it goes to seed, or if it shall have gone to seed, completely to destroy the same by burning it, before any plant shall have broken off or scattered its seed.
- § 2, c. 102, 1895. **§ 1688. Duty of officers to destroy. Penalty.** Any overseer or supervisor of roads, any sheriff, constable or officer of any organized township, or any mayor or police officer of any incorporated city, town or village, who shall know of the existence of any such Russian thistle or French weed within their respective jurisdictions, who shall fail or neglect to destroy the same, or cause them to be destroyed, or make complaint in writing to the commissioner whose duty it is under the provisions of this article, to cause the destruction of such thistle and French weed, shall be guilty of malfeasance in office and upon conviction of such failure or neglect shall be subject to a fine of not less than twenty-five nor more than fifty dollars.
- § 3, c. 102, 1895. **§ 1689. County commissioners' duty.** Each county commissioner shall be charged with the duty of personally superintending and enforcing the provisions of this article within his commissioner district.
- § 4, c. 102, 1895. **§ 1690. Executive relief board.** There is hereby constituted a board of commissioners which shall be designated the "executive relief board," which board shall consist of the governor and two competent persons whom he shall appoint to hold their offices until the governor shall appoint their successors. Said commissioners shall acquire all necessary and practicable information for the purpose, and shall determine the general methods and seasons for the destruction of Russian thistle and French weed, prior to June 1, 1895. They shall cause their general determinations, with such rules and regulations as they may deem wise to be printed, and at least twenty copies of the same shall be sent to the auditor of each county in the state. They shall also cause a copy of such determinations, rules and regulations to be sent to each newspaper in the state. They may determine upon special methods and seasons for such destruction when in their judgment it shall seem best, and such special determinations and the rules and regulations which they may prescribe for their execution shall be printed or not as they may deem wise, and notice of them shall be given only as shall be necessary in each case. They may at any time change or modify such determinations, rules and regulations, and in such case they shall send to the county auditors printed copies of such changed and modified determinations, rules and regulations; and all the determinations, rules and regulations so established by such commissioners, shall have the full force of law. The board of commissioners hereby established shall control and direct any and all operations contemplated in any appropriation which may be made, and of the expenditure of any money which may come into the possession of the state from any such appropriation, from taxes as provided in section 1703, or from any other source, to be used for the destruction of Russian thistle and French weed. They shall file

itemized vouchers for such expenditures with the state auditor, who shall issue his warrants upon the state treasurer for the amount of such vouchers. No claim shall be allowed and no money paid out of the state treasury, or out of any county treasury for any expense of destruction of Russian thistle and French weed not done in accordance with the determinations, rules and regulations which such board of commissioners shall prescribe. If the executive relief board shall ascertain that for twenty days after the time prescribed by the rules and regulations of said board for the destruction of Russian thistle and French weed, the work of such destruction has, in any place not been in good faith begun and vigorously prosecuted, then said board shall direct the county commissioner within whose commissioner district such failure to so begin and so prosecute such work exists, to begin such work at once and vigorously to prosecute and complete the same. Such direction shall specify the particular facts constituting such failure and if for five days after such direction such county commissioner shall fail or refuse to begin in good faith and to prosecute vigorously such work, then said board may file in the office of the auditor of such county a copy of such direction with proof of service thereof, and may thereupon proceed themselves to cause such work to be done, and shall audit the expense of such work and issue vouchers for such expense to the persons employed to perform such work, which vouchers may be presented to such county auditor, and he shall thereupon issue warrants to the treasurer of such county for the amounts of such vouchers payable to the holders thereof out of the road fund of such county. Such direction of said board shall be in writing, and may be served personally or by registered mail; proof of service in the former case shall be by affidavit attached to a copy of such direction, and in the latter by affidavit of mailing attached to a copy of such direction and accompanied by the post office registry receipt; provided, that the expense of any such destruction which the executive relief board may cause to be so done on any lands or fire breaks as specified in section 1697, shall be a charge upon the state, and for the payment of such expenses by him, the treasurer of such county may retain a sufficient amount of money in his next settlement with the state treasurer in the manner provided in section 1697.

§ 1691. Owners or occupants of land to destroy. Any owner or occupant of any land in any commissioner district in any county, or any citizen of such district, may make complaint to the county commissioner of such district, by written notice of the existence of Russian thistle and French weed on any land or lands, describing the same, in the district of such commissioner, such thistle or French weed not being on any highway, roadway or trail in use by the public. Thereupon such county commissioner shall at once notify the occupant of such land, in writing, if such land is occupied, and in any case such county commissioner shall require the county auditor of such county at once to notify in writing the owner of such land, if his address is filed with such county auditor, or if it can be ascertained, of the existence of such thistle or French weed upon such land; and such notice served on such owner shall be sent by registered mail, and all post office receipts therefor shall be filed and preserved by such county auditor. If no such service of notice on the owner can be had, then notice shall be published one week in some newspaper published in such county; or if none is published,

§ 5, c. 102, 1895.

then a copy of such notice shall be conspicuously posted ten days on the front door of the court house of such county. It shall then become the duty of such occupant or owner, completely to destroy such thistle and French weed on such land, but not on any highway, roadway or trail in public use, in the manner and season which shall be determined as provided in section 1690. If within ten days after completion of service, publication or posting of notices aforesaid, but not earlier than ten days after the date so fixed as provided in section 1690, as the beginning of the season for destroying Russian thistle and French weed, the destruction of such Russian thistle and French weed on such land has not been completed, or begun and vigorously prosecuted, such county commissioner shall at once cause such thistle and French weed to be destroyed in the manner provided for in section 1690; and he shall verify the expense thereof by an itemized statement to the county auditor and the county auditor shall, at the meeting of the board of county commissioners, as provided in section 1702, lay the same before such board, and the amount which in any such case shall be allowed by such board of county commissioners shall be entered upon the tax list as therein provided, and such county auditor shall then issue his warrant for such amount to be paid out of the road fund of the county.

§ 6, c. 102, 1895.

§ 1692. Duty of railroads to destroy thistles on right of way. Any owner or occupant of any land in any commissioner district, or any citizen of such district, may make complaint to the county commissioner in charge of that district, by written notice, of the existence of Russian thistle or French weed on any part of any railroad right of way lying in such district, designating as near as may be the locality complained of. Thereupon the county commissioner shall require the county auditor of such county at once to notify the division superintendent having in charge such right of way in such district for the railroad company operating the line of railway to which such right of way appertains, of the existence of such thistle or French weed on such right of way, and such notice served on such superintendent shall be sent to him by registered mail, addressed to the post office situated in the city, village or town in which his office may be located, and all postoffice receipts therefor shall be filed and preserved by such auditor. It shall then become the duty of such railroad company completely to destroy such thistle and French weed on such right of way in the manner and season which shall be determined upon as provided in section 1690. If within ten days after the service of such notice, the destruction of the thistle or French weed complained of, the existence of which has been made, has not been completed, or begun and vigorously prosecuted, then it shall be the duty of such county commissioner to cause such thistle or French weed to be destroyed on such right of way in the time and manner provided in section 1690, and such county commissioner shall certify an itemized statement of the expenses thereof to the county auditor in writing, and the county auditor shall, at the meeting of the board of county commissioners as provided in section 1702, lay the same before such board, and the amount which, in any case, shall be allowed by such board of county commissioners for destruction of Russian thistle or French weed on such right of way within such county shall be entered upon the tax list as therein provided, and such county auditor shall issue his warrant for such amount, to be paid out of the road fund of such county.

§ 1693. Road work used in destruction, how. Any owner or occupant of land in any commissioner district, or any citizen of such district, may make complaint by written notice to the county commissioner of such district, of the existence of Russian thistle and French weed, in any highway, road, way or trail in public use, whether the same is a public highway or not, designating as near as may be the locality complained of, and it shall then be the duty of such county commissioner to cause such thistle and French weed to be destroyed in the manner hereinbefore provided; and such county commissioner shall first require the overseer or supervisor of highways within the proper road district, to cause so much as may be necessary of the work which, thereafter, in that year may be done in payment of road taxes, in such road district to be expended in the destruction of such thistle or French weed; and if such work in such highway or road district, so done by all persons subject to road poll tax, shall not suffice for the complete destruction of such thistle and French weed then such county commissioner shall employ such further means as may be necessary to cause such thistle and French weed to be completely destroyed. And such county commissioner shall certify the expenses thereof by an itemized statement to the county auditor, and the county auditor shall, at the meeting of the board of county commissioners as provided in section 1702, lay the same before such board, and the county auditor shall issue his warrants for such amount when approved by the board of county commissioners, to be paid out of the road fund of such county. § 7, c. 102, 1895.

§ 1694. Complaint made to sheriff on failure of commissioners to act. If after complaint is made according to the provisions of sections 1691 and 1692, any county commissioner shall fail to serve notice for the destruction of the Russian thistle and French weed as by this article required of him, within five days after such complaint is made, then the party making such complaint may make complaint to the sheriff of such county by written notice, and such notice shall recite the fact that notice has been served upon such commissioner and that no action has been taken by him, and it shall then become the duty of such sheriff to proceed in all particulars as required of the county commissioner by this article. § 8, c. 102, 1895.

§ 1695. Publication of notice. If after the complaint of the existence of Russian thistle or French weed made according to the provisions of sections 1691 and 1692, the commissioner shall have duly served notice for the destruction of such thistle and French weed as by this article required of him, and if within fifteen days after completion of notice of publication or posting of notice, as provided by sections 1691 and 1692, but not earlier than ten days after the date so fixed as provided in section 1690, as the beginning of the season for destroying said thistle and French weed the destruction of the thistle and French weed on such right of way or such land has not been completed, or begun and vigorously prosecuted by the county commissioner as provided in this article, then the party making such complaint may serve written notice on the sheriff of such county, reciting the fact of such failure to destroy or cause to be destroyed such thistle and French weed, and it shall then become the duty of such sheriff to proceed in all particulars for the destruction of such thistle and French weed as required of the county commissioner by this article. § 9, c. 102, 1895.

§ 10, c. 102, 1895.

§ 1696. Duty of sheriff in cases of noncompliance with law. If after the complaint of the existence of Russian thistle and French weed according to the provisions of section 1693, any county commissioner shall fail to begin and vigorously prosecute the destruction of such Russian thistle and French weed as by this article required of him within five days after such complaint has been made, on any highway, road, way or trail in public use, concerning which such complaint has been made, then the party making such complaint may complain to the sheriff of such county by written notice, such notice reciting the fact that due notice has been served upon such county commissioner, but that no action has been taken by him, and it then shall become the duty of such sheriff to proceed in all particulars for the destruction of such thistle and French weed as required of the county commissioner by this article.

§ 11, c. 102, 1895.

§ 1697. State lands. Duty of commissioners to examine. It shall be the duty of every county commissioner in his commissioner district to examine or cause to be examined all leased lands owned by the state and all school lands and all broken lands, the title to which yet remains in the United States, and all fire breaks which have been made without warrant or license on the part of the owner of the land on which such fire breaks exist, and, if Russian thistle and French weed are found on any such lands or fire breaks, they shall be destroyed under the direction of such county commissioner, and he shall certify the expense thereof by an itemized statement to the county auditor of such county, and such county auditor shall at the meeting of the board of county commissioners as provided in section 1690, lay the same before such board, and such county auditor shall issue his warrants for such amount when approved by such board of county commissioners, to be paid out of the road fund of such county, and such expense so certified shall be a charge upon the state, and the amount thereof shall be withheld by the county treasurer in his next payment to the state, by remitting to the state treasurer the itemized vouchers for such expense in lieu of the money withheld; such itemized vouchers shall be duly certified by the county auditor as approved by the board of county commissioners; provided, that the county commissioner who shall discover or be informed that Russian thistle and French weed exist on any land in his commissioner's district, the title to which land is in the United States, but which land is occupied, held or cultivated by any person, shall cause notice to be served on such person to destroy such thistle and French weed in the manner provided for an owner of land in section 1691. And thereafter such persons shall be subject to the same obligation as provided in section 1691, the same as if he owned such land, and if he shall refuse or neglect to destroy such thistle and French weed, and if such thistle and French weed are destroyed by and under the direction of such county commissioner, then he shall be assessed with a personal tax for the expenses of so destroying such thistle and French weed as provided in section 1702. Such person shall also be subject to all the provisions and penalties of section 1699.

§ 12, c. 102, 1895.

§ 1698. U. S. lands. Whose duty to keep clear of weeds. Every county commissioner shall ascertain by inquiry and investigation if Russian thistle and French weed exist on any highway, road, way or trail in public use, or any part thereof in his commissioner district. If he shall ascertain that such thistle and French weed so exist he shall notify any overseer or supervisor of

highways or roads, whose highway or road district lies in whole or in part in any such commissioner district, and within which highway or road district any such thistle and French weed exist on any such highway, road, way or trail in public use, to notify all persons who are legally required or permitted to work out any road taxes in that year, that such work shall be done, so far as such county commissioner shall determine to be necessary, under the direction of such overseer or supervisor, in the destruction of such Russian thistle and French weed in the time and manner fixed as provided in section 1690, and if such persons or any of them shall fail so to work out their poll taxes, then the money which they, or any of them, shall pay in lieu of such work, shall be paid by the officer into whose possession or keeping such money shall come, to the county treasurer, who shall credit the same to the road fund of such county to be expended for the purposes of this article; and when such county commissioner shall have so notified any such overseer or supervisor of highways or roads as herein provided, no work on any highway or road shall be done in payment of road taxes on any such highway or road district, and no money collected in payment of road poll taxes in any such highway or road district, shall be expended until the requirements of such county commissioner are fulfilled. No person shall be relieved hereby from any part of the road poll tax to which he shall be subject by law.

§ 1699. Failure or refusal to destroy. Penalty for. Any owner or occupant of any land who shall receive written notice from the county commissioner or county auditor as provided in this article to destroy any Russian thistle and French weed existing on the land owned or occupied by him, who shall fail or refuse to destroy the same within the time required by the notice served on him, in accordance with the provisions of this article, shall be deemed guilty of a violation of the provisions of this article, and when convicted thereof, shall be subject to a fine of not less than five dollars nor more than ten dollars and costs of prosecution. Upon complaint of any owner or occupant of any land or of any citizen of the commissioner district in which the land owned or occupied by the party so notified lies, it shall be the duty of the state's attorney of such county, if such complaint seems to be reasonable, to prosecute the party complained of for such failure or refusal, and the penalty imposed, if any, shall be paid to the party making such complaint. § 13, c. 102, 1895.

§ 1700. Lands on which no thistle grows. Owners may notify. To the end that the propagation and spread of Russian thistle and French weed may to that extent be prevented and for the purpose of this article, it is enacted that any owner or occupant of any cultivated land which is free from Russian thistle and French weed, who shall know or be informed of the existence of any Russian thistle or French weed on cultivated land within two miles of, and being the nearest cultivated lands on which Russian thistle or French weed exist to the lands which he owns or occupies, and who shall believe from the existence of such thistle or French weed that there is danger that the cultivated lands so occupied and owned by him will be seeded from such thistle and French weed if they should go to seed, may serve a written notice on the owner or occupant of the cultivated land on which such thistle and French weed exist, or if no such service can be had, then by posting such notice conspicuously on such cultivated land, warning such owner or occupant to § 14, c. 102, 1895.

destroy such thistle and French weed before they or any of them shall go to seed, and that otherwise he shall hold him responsible for any damages which in the ensuing season may result therefrom to the land which he owns or occupies. And if in such ensuing season Russian thistle and French weed are found on the lands owned or occupied by the party who has given such notice, then a failure or neglect on the part of the owner or occupant on whom such notice is served, to destroy such thistle and French weed and all of them, before they or any of them shall have gone to seed, shall be prima facie evidence that such thistle and French weed found on such lands in such ensuing season, have come from seeds produced on the lands owned and occupied by the parties so notified, and he shall be liable for damages accordingly. And inasmuch as damages of this nature must be exceedingly difficult to determine, the minimum of such damages is hereby declared to be twenty-five cents for each square acre of the land occupied by the party who has served such notice, on which any Russian thistle and French weed may be found in such ensuing season.

§ 15, c. 102, 1895.

§ 1701. Penalty for commissioner's or sheriff's failure.

Whenever any county commissioner or any sheriff shall neglect or refuse to comply with the provisions of this article within five days after having received notice as provided in sections 1691 to 1696, inclusive, he shall be subject to a fine of fifty dollars; and it is made the duty of the state's attorney of the several counties to enforce the provisions of this article.

§ 16, c. 102, 1895.

§ 1702. Assessments, when and how made. On the first Wednesday of November in each year the board of county commissioners of every county in which Russian thistle and French weed have been destroyed, under the provisions of this article, shall hold a session at their usual place of meeting for the purpose of levying an assessment against the lands upon which such thistle and French weed have been destroyed, and upon any railroad company operating any line of railroad in the state, upon the right of way of which line within such county such Russian thistle and French weed have been destroyed, and a personal tax upon every person who in that year has occupied, held or cultivated any land the title to which is in the United States, upon which land any such thistle and French weed has been destroyed in accordance with this article; and it shall be the duty of every person and corporation chargeable with the duty of destroying Russian thistle and French weed upon any land or right of way within such county, to appear before such board at such time and place and show cause if any there is, why any such land or such railroad company should not be assessed. It shall be the duty of the county auditor to present at such time and place a report showing the expenses incurred or made necessary in the destruction of Russian thistle and French weed upon each tract of land, upon each right of way, and upon all highways, roads, ways and trails in public use in such county. And after the board of county commissioners shall have heard and duly considered all objections to the levy of all and any such assessments it shall be its duty to levy an assessment against every tract of land and upon every railroad company and upon every person for the amount which may be justly due on account of such expenses; and such assessments shall thereupon be extended upon the tax roll for such year as a special assessment against such land or railroad company, and the amount of such assessments shall become

due at the same time and be subject to the same penalties and interest and shall be collected in the same manner as other real and personal taxes. And the proceeds of such assessments so levied shall be paid into and credited to the road fund of such county when collected.

§ 1703. **One mill tax, how levied.** The county auditor of each county shall, at the time of making the annual assessment and levy of taxes for the purposes of this article, levy a tax of one mill on the dollar on all taxable property in such county, which tax shall be collected at the same time and in the same manner as other taxes are collected, and the proceeds of such tax shall be paid by the county treasurer of such county to the state treasurer, and shall constitute a state fund, which shall be designated the "Russian thistle and French weed fund." At the same time the county commissioners of each such county shall, in addition to such tax of one mill so levied as aforesaid, levy a tax on all taxable property in each such county, not to exceed three mills on the dollar, on all taxable property in such county, and a road poll tax of one dollar and fifty cents on each inhabitant subject to poll tax, the proceeds of such tax to be credited to the road fund of such county; provided, that if any organized township in such county shall have already levied a road tax on the taxable property in such township, not less than the tax which the county commissioners of such county shall deem and determine proper to levy in accordance with the provisions of this section, no levy by such county commissioners shall be made on any property in such township; but in such case the county treasurer shall retain for the county road fund from the proceeds of such levy made by each such township an amount equal to that which would have accrued to the county road fund if such levy had been made on the taxable property of any such township as such county commissioners should have deemed and determined proper as aforesaid, proper allowance being made for any road taxes which shall have been paid by work as provided in section 1686, and such county treasurer shall pay over any balance of such proceeds to such township, as now provided by law; and, if any such township shall already have levied a road tax less than the tax so deemed and determined proper by the county commissioners, then such county commissioners shall levy on the taxable property in any such township an additional tax sufficient to make the total road tax on such property equal to the tax they may deem and determine to be proper as aforesaid. And in such case the county treasurer shall not pay over any of the proceeds of such road taxes to such township, whether imposed by the township or by the county commissioners. Out of the sums which shall accrue to the county road fund of any county, or which may at any time be to the credit of any such road fund, shall first be paid all sums made necessary by the provisions of this article, and thereafter if there is any of said fund remaining, it may be expended as provided by law for the expenditure of county road funds. The county treasurer of each county shall pay over out of any proceeds of any road tax, which by section 2499 is provided to be paid to any incorporated city or town in such county, only such amount as shall be in excess of an amount equal to a levy of a tax on all the taxable property of such city or town which the county commissioners shall deem and determine proper to levy on the taxable property of the county for the purposes of this article.

§ 1704. **State thistle fund, what composed of.** All moneys which may be appropriated by the legislative assembly or which may

come into the possession of the state treasurer from any appropriation or from any source for the destruction of Russian thistle and French weed shall form a portion of the Russian thistle and French weed fund.

§ 19, c. 102, 1895.

§ 1705. Transfer of funds by state treasurer, how. After the thirty-first day of December, 1895, after reserving a sufficient fund to pay all outstanding warrants drawn on the Russian thistle and French weed fund under authority of this article, then, out of any money in such fund, may be paid into any other fund as the state auditor may determine:

1. The amount of all expenses which may have accrued to the state under the provisions of section 1697.

2. Any amount which may have been appropriated by the state for the destruction of Russian thistle and French weed and which has been credited to the state thistle fund. And from such Russian thistle and French weed fund shall be paid any further payments or expenditures authorized by this law.

§ 20, c. 102, 1895.

§ 1706. State treasurer custodian of funds. All funds which may accrue to the state Russian thistle and French weed fund shall be kept in the possession or under the control of the state treasurer until paid out as provided for in section 1690.

§ 21, c. 102, 1895.

§ 1707. Warrants draw interest, when. All warrants legally drawn on the road fund of any county in accordance with the provisions of this article shall be paid, or, in case of nonpayment for want of funds, shall be registered and bear interest, and shall be payable in the order of registration the same as other warrants drawn on the road fund of such county, and shall be available in such county for the payment of any road taxes, or of any taxes levied on any lands, or on any railroad company, or of any personal tax, levied under the provisions of section 1702. All warrants legally drawn on the state Russian thistle and French weed fund, if not paid for want of funds, shall be registered and bear interest at the rate of seven per cent per annum and shall be available in payment of any taxes due or that may become due to the state under the provisions of this article.

§ 22, c. 102, 1895.

§ 1708. Payments secured from United States, how. It shall be the duty of the state auditor to tabulate and report to the governor on or before the thirty-first day of December in each year, the several amounts expended by the state under the provisions of this article for the destruction of Russian thistle and French weed upon lands belonging to the United States. Thereafter it shall be the duty of the governor and of the attorney general to take such steps as they may deem proper to secure the payment of the same from the United States.

§ 23, c. 102, 1895.

§ 1709. Jurisdiction of justices of the peace. Justices of the peace shall have concurrent jurisdiction with the district court to try and determine all prosecutions for the violation of any of the provisions of this article. Any owner or occupant of any land, or any citizen of any commissioner district in any county may make complaint of any violation of the provisions of this article occurring within such commissioner district, and thereupon it shall be the duty of the state's attorney for such county, if such complaint shall be reasonable, to prosecute the party complained of for such violation and, upon conviction being had, one-half of the amount of any fines imposed shall be paid to the party bringing such complaint, except as provided in

sections 1699 and 1700; and the remaining half of such fines shall be paid into the road fund of such county.

§ 1710. Preference given in employment, to whom. § 24, c. 102, 1895.
Every county commissioner, in discharging the duties required of him by this article, shall, as fully as he is able, protect every person and all property against unnecessary expense and unjust burdens. Whenever it shall be necessary to employ any person for the destruction of Russian thistle and French weed, preference shall be given, all things being equal and probable expense no greater, to occupants of lands contiguous to the lands on which such destruction is to be prosecuted. There shall be allowed for men and teams employed in such destruction no greater per diem than is now established by law for working out road taxes; persons so employed who fail to carry out their operations to the thorough destruction of the thistle and French weed where employed, or in exercise of industry as in other employments, shall forfeit all pay, proof of such failure being made before the county commissioners sitting as an auditing board as provided in section 1702. No pay shall be allowed or credit given any owner or occupant of land for destroying Russian thistle and French weed on land owned or occupied by him unless by direction of the executive relief board. Any public officer who shall discriminate in favor of or against any person or persons, or who shall willfully incur or permit others acting under him to incur grossly unnecessary expense in the destruction of Russian thistle and French weed under the provisions of this article, shall be deemed guilty of a public offense and, upon conviction of any such offense, shall be subject to a fine of not less than one hundred dollars nor more than two hundred dollars, and become disqualified for his office; and such office shall be and remain vacant until his successor is elected or appointed thereto as provided by law; and pending an appeal the office shall remain vacant unless filled by appointment.

§ 1711. Penalty for planting or cultivating. It is hereby made unlawful to plant, cultivate or purposely grow any Russian thistle or French weed in the state, whether for any supposed or experimental utility, for ornament, as a curiosity or for any purpose whatever; and every person so fostering or permitting the growth of any such thistle and French weed shall be subject to a fine of not less than five dollars nor more than fifty dollars; provided, that the provisions of this section shall not apply to any act or operation done under the authority of the state, of the board of commissioners provided for in this article or of the faculty of the agricultural college of North Dakota for purposes of scientific investigation. § 25, c. 102, 1895.

§ 1712. Unlawful to plow fire breaks, when. To the end that the propagation and spread of Russian thistle and French weed may to that extent be prevented, and for the purposes of this article, it is hereby made unlawful to plow fire breaks in any county that is infested with Russian thistle and French weed, on any land except with the consent, previously obtained of the owner of such land. And such owner shall then be liable to all the provisions of this article for the destruction of Russian thistle and French weed on such fire break. Any person plowing any such fire break in any county aforesaid on land other than his own without the consent, previously obtained, of the owner of such land, shall be subject to a fine of not less than ten dollars nor more than fifty dollars, for each half mile or part of half mile in length of such fire break. He shall also be § 26, c. 102, 1895.

liable to all the provisions of this article for the destruction of thistle and French weed on such fire break. He shall also be liable to the owner of such land for trespass and for damages, and may be sued in any court of competent jurisdiction.

§ 27, c. 102, 1895.

§ 1713. Expense incurred, amount and how. The board of commissioners created under section 1690 are authorized to incur such expenses as in its best judgment shall seem necessary to an intelligent and efficient discharge of its duties. It shall file itemized vouchers for such expenses with the state auditor, who shall issue his warrants for the respective vouchers, which warrants shall be paid by the state treasurer out of any money to the credit of the Russian thistle and French weed fund.

§ 28, c. 102, 1895.

§ 1714. Pay of state commissioners, how drawn. Each member of the board of commissioners created by section 1690 shall be entitled to his actual traveling expenses while in the discharge of his duties in accordance with the provisions of this article, and to three dollars for each day he may be absent from home for hotel expenses, and to all other legitimate expenses incurred in the discharge of his duties according to the determination of the board, and the provisions of this article. He shall from time to time file itemized vouchers for such expenses with the state auditor, who shall issue his warrants therefor, which warrants shall be paid by the state treasurer out of any money to the credit of the state Russian thistle and French weed fund.

§ 29, c. 102, 1895.

§ 1715. Pay of county commissioners and sheriff, amount of. Every county commissioner shall receive for every day actually spent in the performance of his duties under this article, the same compensation to be paid in the same manner, as he is entitled to for the discharge of the other duties of his office; and any sheriff, if the duties of this article shall devolve upon him, shall receive the same compensation, to be paid in the same manner as provided for the county commissioner.

§ 30, c. 102, 1895.

§ 1716. County auditors furnish blanks. Penalty for failure. It shall be the duty of the county auditor in each county to prepare blank forms of notice for use in accordance with the provisions of this article, and such forms shall, without charge, be furnished to parties desiring, or whose duty it shall become, to make use of them. And it shall be the duty of the auditor of each county to serve all notices which may be required of him by any county commissioner in such county, in accordance with the provisions of this article, in every case making diligent search to ascertain the correct post office address of the parties on whom such service shall so be required to be made; and any county auditor who shall fail or neglect to discharge any duty made incumbent on him by this article, shall be subject to a fine of not less than ten dollars nor more than twenty dollars to be enforced as provided for other penalties in this article.

ARTICLE 18. — FIRE ESCAPES.

§ 1, c. 54, 1883.
am'd.

§ 1717. Hotel owners must provide fire escapes. The owners and proprietors of all hotels, factories, public halls, offices and other buildings in this state, over two stories in height, are required to provide safe and suitable fire escapes from all rooms above the second story of such hotel or other building, and when rooms have no outside windows there shall be affixed to the windows in the

hallway leading from such room at least three fire escapes in each window as herein directed. Such fire escape 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 room above the second story; and such rope shall be of sufficient length to reach to the ground; provided, that if the owner or proprietor of any such buildings shall provide good and sufficient iron ladders extending from each of the windows herein mentioned, and from points immediately adjacent to each of such windows, to the ground, securely and permanently fastened to such building, or shall have the fire escape ladder in each of the rooms and hall windows aforesaid, of sufficient length to reach from such windows to the ground, he will be deemed to have complied with the requirements of this section.

§ 1718. Penalty for neglect. Any person violating any of the provisions of the last section shall be punished by a fine of not less than twenty-five dollars for each room in such hotel or other building not provided with fire escapes as aforesaid. § 2, c. 53, 1883.

ARTICLE 19.—DOORWAYS IN PUBLIC BUILDINGS.

§ 1719. Doors of public buildings, construction of. 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 public 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. § 1, c. 54, 1887.

§ 1720. Who shall comply with this article. 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 the last section within six months after the same shall take effect; but nothing herein shall be construed to require a change in the width of existing stairways and doorways, and this article shall not apply to churches and school houses not within the limits of any city or village. § 2, c. 54, 1887.

§ 1721. Penalty for failure to comply. Any person failing to comply with the provisions of this article, or who shall build, maintain or permit to be used any such building contrary to the provisions hereof shall be deemed guilty of a misdemeanor. § 3, c. 54, 1887.

ARTICLE 20.—WEIGHTS AND MEASURES.

§ 1722. 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: § 1, c. 37, Pol. C.

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.
 Clover seed, sixty pounds.
 Coal, stone, eighty pounds.
 Flax seed, 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.

§ 2, c. 37, Pol. C. § 1723. **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.

§ 3, c. 37, Pol. C. § 1724. **Perch of stone.** A perch of mason work or stone shall consist of twenty-five feet, cubic measure.

§ 1, c. 151, 1885. § 1725. **Standard of weights and measures kept by state treasurer.** The state treasurer shall procure and keep in his office the following standards of weights and measures, which shall conform in every particular to the United States standards of weights and measures: 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; such 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 grain; 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. Such treasurer shall be charged with the custody and be accountable to the state for the proper use and care of the same. Such standards shall be used only for testing the standards provided for in the next section, and such treasurer shall keep a record of all county weights, measures, beams and balances, marked and tested by him.

§ 2, c. 151, 1885. § 1726. **County commissioners may purchase duplicates.** The board of county commissioners of each county is authorized to purchase such duplicates of the above enumerated weights and measures as it deems necessary for the use of its county in carrying out the following provisions of this article, which duplicates shall be paid for by the county and be delivered to the sheriff, who shall be the sealer of weights and measures for the county, and may appoint such deputies as he may deem necessary in different parts of the county, who shall possess the same powers and perform the same duties under this article as the sheriff, and may furnish such deputies

with such duplicates as the board of county commissioners may provide for their separate use, or may allow them to use those provided for himself.

§ 1727. **Bond.** Every such sealer and deputy sealer of weights and measures shall give a bond to the county not less than double the cost of the duplicates furnished him, conditioned that he will safely keep and care for the same, and will turn them over to his successor in good condition, and upon such bond shall take and subscribe the oath required of other county officers. § 2, c. 151, 1885. am'd.

§ 1728. **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 the next section, and shall give to the person in charge of the same 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 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 article. For testing any measure, weight or scale as provided in this section, he may collect from 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 the scale, and the sealer shall not be allowed to charge more than fifty cents for testing each scale and its several weights. § 3, c. 151, 1885.

§ 1729. **County commissioners to prescribe regulations.** The board of county commissioners of each county shall prescribe by resolution, 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 change such resolution at any regular meeting, which resolution shall be entered in the minutes of its meeting and published as part of its proceedings; and it shall be unlawful for any person, firm or corporation by themselves or representatives 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, without having the same conform to the standard provided for in this article, and having the same tested as herein provided. § 4, c. 151, 1885.

§ 1730. **Complaint on violation of law. Duty of sealer.** Any person believing any dealer is violating the provisions of this article or any resolution of the board of county commissioners made by authority hereof, may make complaint in writing to any sealer or deputy sealer and deposit with him five dollars, setting forth the particular facts relating to 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 matters complained of by his duplicates, and if found to conform thereto he may convert the five dollars so deposited to his own use as his fees for such services. If he finds that any of the matters complained of are true he shall return the five dollars to the complainant, and it shall be his duty forthwith to arrest the person in charge of such scale and take him before a justice of the peace in the county for trial, and upon conviction, such person, whether the owner or not, shall be guilty of a misdemeanor and punished accord- § 5, c. 151, 1885. am'd.

ingly. In all such cases the sealer or deputy sealer making the test shall make and swear to the complaint and shall be entitled to the same fees as allowed officers making arrest 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 article, or any such 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.

§ 6, c. 151, 1885.

§ 1731. Duty of dealer to have weights, measures or scales tested. It shall be the duty of each 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 quantities than those provided in the resolution of the board of county commissioners of his county, to send by mail a notice to any sealer to test such scale, weights or measures, and it shall be the duty of any sealer receiving such notice to test such scale, weights or measures, within ten days, and during the time before the same are tested, they may be used for such purpose, and the person using them shall be liable only for damages in a civil action.

§ 7, c. 151, 1885.
am'd.

§ 1732. When act takes effect. The last five sections shall take effect and be in force in each county in this state only upon a resolution to that effect being adopted by the board of county commissioners thereof.

PUBLIC SCALES.

§ 1, c. 98, 1893.

§ 1733. County commissioners to establish scales. The board of county commissioners of any county is authorized in its discretion, when petitioned by fifteen or more residents and actual farmers of the county, to establish and locate public scales at suitable railway stations in its county.

§ 2, c. 98, 1893.

§ 1734. Care and capacity of scales. Such scales shall be purchased by the county, and shall be under cover, and of not less than five tons' weighing capacity, and shall be the property of the county, and at all times under its control and subject to removal when the county commissioners shall so require.

§ 3, c. 98, 1893.
am'd.

§ 1735. Appointment of weighmasters. Bond. The board shall also appoint at each place where it establishes such scales, a public weighmaster, who shall have the custody and care of such property, and who shall give a bond in the sum of five hundred dollars, conditioned for the safe-keeping of the same and for the faithful and impartial discharge of his duties.

§ 4, c. 98, 1893.
am'd.

§ 1736. Weighmasters to keep record. Each public weighmaster shall keep a stub record of all weighing, which record and the receipt of such weighmaster shall show for whom property was weighed, and shall, with such receipt, constitute prima facie evidence of the facts therein contained.

§§ 5, 6, c. 98, 1893.

§ 1737. Compensation. Removal. Such public weighmasters shall receive such compensation and shall be governed by such rules and regulations as may be adopted by the board of county commissioners, and may be removed at any time by such board for cause.

ARTICLE 21. — LICENSES.

PEDDLERS AND AUCTIONEERS.

§ 1738. **When peddling unlawful.** It shall be unlawful for any person to travel from place to place in any county within this state for the purpose of carrying to sell, or exposing or offering for sale, barter or exchange at retail, any goods, wares, merchandise or other articles of trade whatsoever, except as hereinafter provided, whether by sample or otherwise, and whether such goods, wares, merchandise, notions or other articles of trade whatsoever, are delivered at the time of sale, or to be delivered at some future time, unless such person shall have first obtained a license as a peddler as hereinafter provided, but this article shall not prevent any manufacturer, mechanic, nurseryman or farmer from selling his work or production by himself, or any patent right dealer from selling his own invention, or to prevent any person from selling or offering to sell at wholesale to dealers only, any goods, wares or merchandise whatsoever, or to prevent train boys from selling to persons traveling on railroad trains, or to prevent any person who by reason of being blind or deaf and dumb is incapacitated for hard manual labor, from selling goods, wares or merchandise on foot or with one horse and wagon, without a license. § 1, c. 142, 1890. am'd.

§ 1739. **License to peddle, how obtained.** Each person desiring to obtain a license as a peddler shall make application in writing to the county auditor of the county in which he desires to peddle, which application shall be signed by the applicant, and shall state in what manner the applicant desires to travel as a peddler, whether on foot or with one or more horses or other beasts of burden. § 2, c. 142, 1890. am'd.

§ 1740. **License fee.** Each applicant before he shall be entitled to such license shall pay into the county treasury of the county where such application is made the following fees: If for a license to travel on foot, including railroads or other public conveyance, the sum of fifteen dollars; if for a license to travel and carry his goods with a single horse or other beast carrying or drawing a burden, the sum of twenty-five dollars; if for a license to travel with a vehicle or carriage drawn by two or more horses or other animals, the sum of forty dollars. § 3, c. 142, 1890. am'd.

§ 1741. **License, how issued.** The county auditor, upon the filing of such application together with the treasurer's receipt for the proper license fee, shall grant to such applicant a license under his official seal, authorizing such licensee to travel and pursue the business in the manner stated in his application, for the term of one year; provided, that all such licenses shall expire on the thirtieth day of April of each year, and the amount to be charged for each license shall be reckoned proportionately for that part of the year from the first day of the month in which such license is issued to the first day of May following; but no license shall be issued under this article for a less sum than five dollars; provided, further, that the county auditor may issue a like license without the payment of any license fee to any applicant who shall prove to the satisfaction of such auditor that he served as a soldier in the United States army or navy during the late Rebellion, and was thereby disabled and rendered unfit for hard manual labor, and was honorably discharged from such United States army or navy. § 4, c. 142, 1890.

§ 5, c. 142, 1890. **§ 1742. Penalty for violation.** Any person found traveling or trading in any county in this state contrary to the provisions of this article, or who shall refuse to produce his license for examination when requested so to do by any resident or officer of the county in which such person shall be traveling as a peddler, shall be deemed guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding twenty-five dollars, or by imprisonment in the county jail where the offense was committed, not exceeding thirty days, or by both.

§ 6, c. 142, 1890. **§ 1743. Act not to apply to incorporated towns or cities.** Nothing contained in this article shall be so construed as to impair, interfere with or take away any of the existing rights or authority of incorporated cities, towns and villages to license and regulate peddlers within their incorporated limits.

EXPRESS COMPANIES.

§§ 1, 2, c. 136, 1890. **§ 1744. License, how procured.** Each express company doing an express business within this state shall, on or before the first day of August of each year, procure a license from the state auditor, which license shall contain the name, population and license fee of every station, city and village wherein such express company is doing business. The words "express company" shall mean any person, company or corporation doing an express business.

§ 3, c. 136, 1890. am'd. **§ 1745. License fee, how determined.** The state auditor shall charge and the state treasurer shall collect from each express company doing business within this state a license fee of five dollars for each station, city and village having two hundred or less inhabitants and ten dollars license fee for each station, city or village having between two hundred and one thousand inhabitants in which they have an agent, and twenty-five dollars license fee for each and every station, city and village having not less than one thousand nor more than three thousand inhabitants, and a license fee of fifty dollars for each station, city or village having over three thousand inhabitants in which they are doing business; provided, that one or all or any number of stations, cities or villages may be named in one and the same license issued to one and the same company.

§ 4, c. 136, 1890. am'd. **§ 1746. Express companies to furnish list of towns and cities.** Each express company doing business in this state shall, on or before the first day of July, each year, make out and deliver to the state auditor a certified list of all stations, cities, towns and villages in which they are doing business in this state.

§ 5, c. 136, 1890. **§ 1747. Notice of license fee required.** The state auditor shall immediately thereupon determine the number of inhabitants of each station, city and village according to the last census, state or federal, and he shall satisfy himself of the correctness of the list sent him. He shall then notify each express company of the number of inhabitants and the license fee required for each station, city and village wherein they are doing business, and the total amount of such license fee which they are required to pay in this state, which notice shall be sent to the president, secretary or treasurer of the proper express company, as soon as possible after the first day of July of each year.

§ 6, c. 136, 1890. **§ 1748. License fee turned into state treasury.** The state auditor upon the payment of the license fee herein required shall

issue a license to the company entitled thereto; and he shall pay all license fees into the state treasury and take the state treasurer's receipt therefor, which fees shall be credited to the general fund.

§ 1749. **Books of record.** The state auditor and treasurer shall each keep a book in which shall be entered the name of each express company doing business in this state, the names of stations, cities, towns and villages in which they are doing business, and the number of inhabitants of each, also the amount of license fee collected for each station, city, town and village. § 7, c. 136, 1890. am'd.

§ 1750. **Penalty for violation of this article.** Any express company doing business in this state and failing to comply with the provisions of this article shall be subject to a fine of not less than two hundred dollars nor more than one thousand dollars for each offense, and no property belonging to such company shall be exempt from seizure and sale for such fine. § 8, c. 136, 1890.

SLEEPING CAR COMPANIES.

§ 1751. **License, amount of.** All companies, corporations or persons, other than railway corporations operating railroads in this state, shall be required to pay a license fee of one hundred dollars per annum on each sleeping car run or operated on any railroad in this state; provided, that the aggregate amount of such license fee shall not exceed the sum of five thousand dollars per annum. § 1, c. 137, 1890.

§ 1752. **License fee, when paid. License.** The license herein required shall be issued for one year beginning on the first day of May in each year, and it shall be the duty of such companies, corporations or persons to pay such license fee into the state treasury on or before the first day of May in each year, and the state treasurer shall issue a duplicate receipt for such payments. Such license shall be issued by the secretary of state, and he shall issue a license for each sleeping car on which the license fee shall have been paid. Such duplicate receipt of the state treasurer filed with the secretary of state, shall be evidence of the number of sleeping cars on which such license fee has been paid. §§ 2, 3, c. 137, 1890. am'd.

§ 1753. **Statement to be filed with state treasurer.** It shall be the duty of each company, corporation or person, at the time of the payments herein required to be made, to file with the state treasurer a sworn statement which statement shall contain the number of sleeping cars with the names thereof, to be run or operated in the state by such company, corporation or person during the year for which such license is applied for, and for the purpose of ascertaining the truth of such affidavit, full power is vested in the commissioners of railroads to examine under oath, the officer or employees of such companies, corporations or persons, and if any person so examined shall knowingly or willfully swear falsely concerning the matter aforesaid, he shall be guilty of perjury. For the purpose of securing the payment of such license fee the state shall have a lien upon all property of such companies, corporations or persons, and such lien shall have priority over all other liens, claims or demands against such companies, corporations or persons. § 4, c. 137, 1890. am'd.

§ 1754. **License fee credited to general fund.** All money received by the state treasurer under the provisions of this article shall be by him immediately placed to the credit of the general fund of the state. § 5, c. 137, 1890.

§ 6, c. 137, 1890.
am'd.

§ 1755. Penalty for failure to comply with this article.

If any company, corporation or person operating or running sleeping cars in this state shall fail to furnish the sworn statement as aforesaid, at the time and in the manner provided by law, or to pay the license fees as herein provided, and such default shall continue during the period of thirty days, such company, corporation or person shall be subject to a penalty equal to twenty-five per cent of the license fees due under the provisions of this article, and the state treasurer shall forthwith ascertain the amount of such license fees due from such company, corporation or person as nearly as may be and shall thereupon collect such license fees together with such penalty. The amount of license fees ascertained by the state treasurer as aforesaid, shall, together with such penalties be by him entered in a book to be kept for that purpose, and such entry, when so made, shall stand in the place of the sworn statement required to be made by such companies, corporations or persons, and shall in all courts in this state, be evidence of the amount of such license fees and penalty, and of the other facts stated therein pursuant to this article.

§ 7, c. 137, 1890.

§ 1756. Distress and sale. At any time after the expiration of the period of thirty days, after any license has become due and payable under the provisions of this article, the state treasurer shall distrain sufficient property, goods or chattels, if found within the state, to pay such license fees and penalty, and the costs of sale, and shall immediately advertise the same for sale in at least three newspapers published in the state, stating the time when and place where such property will be sold, which notice shall be published for four weeks. Such sale shall take place at some point in this state and the proceeds of the same shall be applied to the payment of the license fees due, together with such penalties and costs. The delinquent company, corporation or person, may pay such license, penalty and costs at any time before the sale of the property distrained, and thereupon all further proceedings in connection with such distress shall cease and the property be returned to the owner thereof.

§ 8, c. 137, 1890.

§ 1757. What sleeping cars exempt. The provisions of this article shall apply to all companies, corporations or persons running or operating sleeping cars in this state; provided, that sleeping cars owned and operated exclusively by railroad companies doing business in this state, as a part of their railway equipment, shall be exempt from the provisions of this article.

ARTICLE 22.— LOGS AND LUMBER.

§ 1, c. 32, Pol. C.

§ 1758. Lawful to boom logs 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 stream.

ARTICLE 23.— OIL INSPECTION.

§ 1, c. 107, 1890.
am'd.

§ 1759. Inspector. Appointment. Removal. There shall be appointed by the governor, by and with the advice and consent of

the senate, at each biennial session of the legislative assembly, a suitable person, resident of this state, who is not interested in manufacturing, dealing in or vending any illuminating oils manufactured from petroleum, a state oil inspector, whose term of office shall be two years commencing on the first Tuesday in April succeeding his appointment and until his successor is appointed and qualified. The governor shall have power to remove such person from office whenever it shall appear to him from good and sufficient evidence that such officer is guilty of malfeasance or nonfeasance in the performance of his duty, and may fill any vacancy arising from such removal, or from resignation, death or removal from the state, by a new appointment.

§ 1760. Oils, how inspected. It shall be the duty of such inspector to examine and test as provided by this article, the quality of all mineral or petroleum oil, or any oil, fluid or substance which is a product of petroleum or into which petroleum enters or is found as a constituent element, whether manufactured in this state or not, before the same is offered for sale or sold for illuminating purposes within the state; and such inspection shall be conducted in the following manner: The test shall be made in the Thagliabue open cup tester or commercial tester, and in using the tester the oil shall not be heated after it has attained the temperature of one hundred degrees Fahrenheit faster than three degrees a minute, and the flame of the lamp shall be so adjusted that the rise in temperature shall be as near to two degrees per minute as practicable, and the tapers used in making the test shall be such as shall give a clean flame as nearly uniform in size as is practicable, and such inspector shall give such instructions as in his judgment shall be necessary to secure uniformity in the methods of making the tests, and it shall be unlawful to use or sell any illuminating oil which on the application of a well-lighted taper, or similar flame, will take fire and burn at a temperature below that of one hundred and twenty degrees above the zero point of Fahrenheit's thermometer as shown by such apparatus, or which for any reasons whatever shall not remain clear and transparent upon being cooled to a temperature equal to that of twenty degrees above the zero point of such thermometer, or which shall deposit any solid particles of paraffine when cooled as aforesaid; and the casks, barrel or other package containing the same shall be marked "rejected" and such brands or devices as are hereinafter mentioned for approval or rejection of oils shall further contain the words "fire test," followed by numerals stating the temperature at which such oil will burn upon application of the test prescribed by this article; provided, that the inspector may use for this purpose numerals that are divisible only by ten.

§ 2, c. 107, 1890.
§ 1, c. 77, 1893.

§ 1761. Duties and powers of inspectors. Bond. Deputies. The person appointed state oil inspector shall, before entering upon the duties of his office, take the oath required of other civil officers, and execute a bond to the state in the sum of five thousand dollars with sureties to be approved by the governor, conditioned for the faithful performance of his duties. The inspector when so appointed and qualified is empowered to appoint a suitable number of deputies who are not interested in manufacturing, dealing in or vending any illuminating oil manufactured from petroleum. Such deputies are empowered to perform the duties of inspection of oils and shall be liable to the same penalties as the state oil inspector,

§ 3, c. 107, 1890.

and such inspector may remove any of the deputies and appoint others in their place. Each deputy shall before entering upon the duties of his office take a like oath and execute a bond as aforesaid in the sum of not less than one thousand dollars nor more than five thousand dollars as the state inspector may direct, which bond with such sureties shall be approved by the county judge and filed in the office of the clerk of the district court of the county for which such deputy inspector is appointed. Such inspector and his deputies are empowered to and they shall upon application and the tender of the fees herein provided for, enter into any store, shop or warehouse, in which such illuminating oils are kept for sale, and inspect and test such oils, branding the barrels in which the same are contained as provided in this article. They shall upon application and tender of the fees, during business hours, inspect and test all illuminating oils standing upon a railway track in what is known as tank cars, in which it is shipped into this state, and the same shall not be drawn off into a warehouse tank or unloaded until so inspected, and no oil subject to test as herein provided shall be drawn off or removed from the tank, cask, barrel or other vessel in which it has been shipped into this state, until the same has been tested as herein provided. When such oil in the tank, railroad car, cask, barrel or other vessel in which it was shipped has been inspected as provided above, no other inspection shall be necessary, but the inspector and his deputy shall, when such oil is put into barrels, brand the same as provided in this article without charge. The inspector and his deputies shall be authorized and empowered, in case they or either of them shall find on the premises of any person, any illuminating oils which appear to be uninspected, duly to inspect the same, and shall charge therefor the fees allowed by this article, and shall have a lien on such oils so inspected for such fees, which lien may be enforced as provided in cases of liens on personal property. The decision of any deputy inspector on any barrel of oil shall be subject to appeal to the state inspector, whose decision shall be final.

§ 4, c. 107, 1890.
am'd.

§ 1762. Fees for inspection. They shall be entitled to demand and receive from the owner or person calling upon them, or for whom they shall inspect, the sum of forty cents for testing and marking a single barrel; thirty cents each when not exceeding five in number; twenty-five cents each when not exceeding ten in number, and fifteen cents per barrel when the number of barrels is greater than ten submitted at one time for inspection. When the amount contained in any tank, cask or other vessel shall exceed fifty gallons, each fifty gallons shall constitute a barrel. All oils in quantities less than fifty barrels shall be inspected at a railroad or river station, unless the person requesting such inspection shall pay the inspector in advance in addition to the compensation hereinbefore provided ten cents per mile for each mile necessarily traveled in going to and returning from the place where such inspection is to be made, the distance to be computed from the place of residence of such inspector.

§ 5, c. 107, 1890.

§ 1763. Brands to be used. Penalty for selling rejected oils. The inspector and his deputy shall provide themselves at their own expense with the necessary instruments and apparatus, stencils, brands and stamps for testing and marking the quality of illuminating oils. The inspector shall prepare the forms of all stencils, brands and stamps provided for in this article, and also all necessary rules and regulations for inspection, not inconsistent with the provisions

of this article, and such rules and regulations shall be binding on all his deputies in the state. Any person selling or disposing of oil which has been rejected is guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not exceeding five hundred dollars or to imprisonment in the county jail for a term not exceeding six months, or to both. The inspector or his deputies may, in their discretion, without fee, at any time subject such oils to a reinspection as provided in section 1760, and if on such reinspection any of such oil shall fail to meet the requirements of this article, the inspector or deputy shall erase the brand "approved" from the barrel or other vessel containing such oil, and shall brand thereon the words "rejected for illuminating purposes," and it shall thereafter be unlawful to sell or dispose of such oil, and the person so offending shall be guilty of a misdemeanor and be subject to the penalty in this section provided.

§ 1764. Inspector to keep record. It shall be the duty of each deputy inspector to keep a true and accurate record of all oil inspected by him, which record shall state the date of inspection, the number of barrels as near as they can be ascertained and the name of the person for whom inspected, and he shall make a report to the state inspector at the end of each month containing a true transcript of such record, and it shall be the duty of the state inspector to keep a like record of all oils inspected by him, and at the end of each year to make a report to the secretary of state of the number of barrels so inspected and the name of the person for whom inspected, also the amount of inferior or unsafe oils for illuminating purposes, with the name of the dealer in whose hands found and from whom received by such dealer. Such record shall be open to the inspection of any person interested. § 6, c. 107, 1890.

§ 1765. Selling uninspected oils. False brands. Penalty. § 7, c. 107, 1890.
If any person sells or attempts to sell in this state any such oils to be consumed for illuminating purposes within the state, whether manufactured in the state or not, without first having the same inspected as hereinbefore provided, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and if any person shall falsely brand any cask, barrel or other vessel contrary to the provisions of this article or shall refill or use any barrel having the inspection brand thereon, without having the oil therein inspected, he is guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not exceeding five hundred dollars or to imprisonment in the county jail for a term not exceeding six months, or to both.

§ 1766. Penalty. Whoever knowingly uses, sells or offers for sale for illuminating purposes any oil or product of petroleum, except as hereinafter provided, before the same has been inspected and branded as herein provided, is guilty of a misdemeanor and on conviction thereof is subject to a fine of not exceeding one hundred dollars or to imprisonment in the county jail for a term not exceeding sixty days, or to both. § 8, c. 107, 1890.

§ 1767. Penalty for failure to destroy brand on empty cask. § 9, c. 107, 1890.
Any person selling or dealing in illuminating oils produced from petroleum who sells or disposes of an empty cask or barrel which has been branded by the state inspector or deputy, before canceling, removing and effacing such brand, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine in any sum not exceeding five dollars for each cask or barrel thus disposed of.

§ 10, c. 107, 1890.

§ 1768. Penalty for adulteration. No person shall fraudulently adulterate with any substance whatever for the purpose of sale, or for use for illuminating purposes, any oil obtained from petroleum or from coal, in such manner as to render it dangerous to use, nor shall any person knowingly sell or offer for sale any oil obtained from petroleum or from coal, or from the product of either, for illuminating purposes within this state, which, by reason of being adulterated or for any reason whatever will flash at a temperature of less than one hundred degrees Fahrenheit, under the test herein prescribed. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine in any sum not exceeding five hundred dollars, or to imprisonment in the county jail for a term not exceeding six months, or to both.

§ 11, c. 107, 1890.

§ 1769. Liability for violation of this article. Whoever knowingly sells or keeps for sale to be consumed in this state any illuminating oil manufactured from petroleum or its products, and not inspected as provided in this article shall be responsible to any person injured for any violation of the provisions of this article by himself or by any clerk or person in his employ in the sale of such oil.

§ 12, c. 107, 1890.

§ 1770. Complaints for violation. The inspector or any deputy having knowledge of the violation of any of the provisions of this article shall enter complaint before any court of competent jurisdiction against the person so offending, and in case they neglect to enter such complaint the inspector or deputy so failing shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and shall be removed from office.

§ 13, c. 107, 1890.

§ 1771. Inspector prohibited from dealing in oils. No inspector or deputy shall while in office traffic directly or indirectly in any article in which petroleum or other product thereof is a constituent part, which he is appointed to inspect, and any inspector or deputy who violates any of the provisions of this section is guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding five hundred dollars and be removed from office.

§ 14, c. 107, 1890.

§ 1772. Further penalty. Any person violating any of the provisions of this article, for which violation a penalty is not herein expressly provided, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for a period not exceeding six months, or by both.

§ 15, c. 107, 1890.

§ 1773. What exempt from this article. Nothing in this article shall prevent the use of gas or vapor from oils for illuminating purposes when the oils from which such gas or vapor is generated are contained in closed reservoirs outside of the building illuminated or lighted by such gas, nor shall anything in this article be so construed as to prevent the use in street lamps of lighter products of petroleum, such as gasoline, benzine, benzole and naphtha.

ARTICLE 24. — ABSTRACTERS.

§ 1, c. 1, 1889.
am'd.

§ 1774. Abstracters to give bonds. 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 this state, or to demand and receive pay for the same without first having for use in such business a complete set of abstract books of all instruments

filed or of record in the office of the register of deeds in and for the county in which such business is to be conducted, or in good faith engaged in the preparation of such books, and without first filing in the office of the county auditor of the county in which such business is to be conducted, a bond to the county in the penal sum of ten thousand dollars, with not less than three sureties 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 person for whom any abstract or certificate of title is made by reason of any error, deficiency or mistake in any abstract or certificate of title made and issued by such person, firm or corporation; provided, that in counties containing less than ten thousand inhabitants, the bond herein required shall be five thousand dollars.

§ 1775. Certificate issued, when. When any abstracter shall have filed his bond and the same shall have been approved as above provided, he shall be entitled to receive from such county auditor a certificate reciting that such bond has been 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 sureties upon the bond, unimpaired. § 2, c. 1, 1889.

§ 1776. Certificate of authority. It is the duty of the county 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, which shall authorize him to make such abstracts. Such certificate shall continue in force for five years, unless recalled or canceled as provided in the next section. 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 the county during office hours; and it is the duty of any person, firm or corporation holding such certificate, to furnish an abstract of the title to any tract of land in such county when requested so to do, on payment of the fees hereinafter provided. § 2, c. 1, 1889. am'd.

§ 1777. Additional security. The bond herein provided for may run during the continuance of such person, firm or corporation in such abstract business, not to exceed five years, and the board of county commissioners, may at any time require such abstracter upon ten days' notice to furnish an additional bond, and show cause why the same should not be declared invalid, and the certificate thereof recalled and annulled, and if within such time such additional bond is not furnished and no sufficient reason is shown to the commissioners why the same should not be required, then the certificate issued to such abstracter shall be recalled and annulled. § 3, c. 1, 1889. am'd.

§ 1778. Appeal. The abstractor or complainant may have an appeal to the district 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 auditor of such county; and such appeal shall be summarily decided by the court on such evidence, and the costs of such appeal, including the furnishing of such evidence, shall be adjudged against the defeated party. § 4, c. 1, 1889.

§ 1779. Penalty for violation. Any person, firm or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars nor less than twenty-five dollars for each offense. § 5, c. 1, 1889.

§ 6, c. 1, 1889.
am'd.

§ 1780. Officer's certificates to abstracts. The provisions of this article shall not be construed to prevent the register of deeds, county treasurer, and clerks of court of the different counties from certifying to abstracts of title to lands from the records of the respective offices; but such officers shall be liable on their official bond for the faithful performance of all acts as abstracters.

§ 7, c. 1, 1889.
am'd.

§ 1781. Fees. For making and certifying to abstracts under the provisions of this article, the following fees and no more shall be allowed: For the first entry on any one abstract, one dollar; for each subsequent entry or transfer on such abstract, twenty-five cents; for entry relating to taxes, twenty-five cents; for entry relating to mechanic's liens, twenty-five cents; for entry as to judgments, which may constitute liens on the property so abstracted, fifteen cents for each name certified to; for certificate to abstract, twenty-five cents. It shall be the duty of such abstracters to continue any abstract so made by them, on the payment of twenty-five cents for each entry made thereon, and twenty-five cents for the certificate of continuation thereto. Each and every deed, mortgage, affidavit, lease, *lis pendens*, judgment, mechanic's lien or other instrument on file or of record in the offices of the registers of deeds or clerks of court affecting the title to the real estate so abstracted shall constitute an entry; for the abstracting of estates in county courts which are not recorded in the office of the register of deeds, such fees may be charged by such abstracters as may be reasonable, but in no case to exceed five dollars for each estate.

§ 8, c. 1, 1889.

§ 1782. Seal. Any person, firm or corporation furnishing abstracts of title to real property under the provisions of this article, shall first provide a seal, which seal shall have stamped thereon the name and location of such person, firm or corporation, and shall deposit with the county auditor an impression of such seal before the certificate mentioned in section 1776 shall issue, which seal shall be affixed to every abstract or certificate of title, issued by such abstracters.

ARTICLE 25. — PUBLIC WAREHOUSES.

§ 1, c. 126, 1891.

§ 1783. Commissioners of railroads, powers and duties. The duties imposed by the provisions of this article and the powers conferred herein devolve upon the commissioners of railroads.

§ 2, c. 126, 1891.

§ 1784. Handling, weighing and storage of grain. It shall be the duty of the commissioners of railroads to supervise the handling, weighing and storage of grain and seed; to establish all necessary rules and regulations for the weighing of grain and for the management of the public warehouses of the state, so far as such rules and regulations may be necessary to enforce the provisions of this article or any law in this state in regard to the same, investigate all complaints of fraud or oppression in the grain trade of this state, and correct the same as far as it may be in their power.

§ 3, c. 126, 1891.

§ 1785. Rules to be published. The rules and regulations so established shall be printed and published by the commissioners of railroads in such manner as to give the greatest publicity thereto, and the same shall be in force and effect until they are changed or abrogated by such commissioners in a like public manner.

§ 4, c. 126, 1891.

§ 1786. Public warehouses defined. All buildings, elevators or warehouses in this state, erected and operated, or which may here-

after be erected and operated by any person, association, copartnership, corporation or trust for the purpose of buying, selling, storing, shipping or handling grain for profit, are declared public warehouses, and the person, association, or copartnership owning or operating such buildings, elevators or warehouses which are now or may hereafter be located or doing business within this state, whether such owners or operators reside within this state or not are public warehousemen within the meaning of this article, and none of the provisions of this article shall be construed so as to permit discrimination with reference to the buying, receiving and handling grain of standard grades, or in regard to the persons offering such grain for sale, storage or handling at such public warehouses, while the same are in operation.

§ 1787. License, how obtained. Fee, how determined. § 1, c. 115, 1895.

An annual state license must be obtained through the commissioners of railroads for each and every public grain warehouse in operation in this state. No license issued under this article shall describe more than one public grain warehouse, or grant permission to operate any other public grain warehouse than the one therein described. The license fee is hereby fixed at two dollars for warehouses of a capacity of less than ten thousand bushels; and three dollars for warehouses of a capacity of ten thousand bushels and over, for each public grain warehouse; provided, that before any license is issued the person applying therefor shall file with the commissioners of railroads the receipt of the state treasurer, showing that the applicant has paid into the state treasury the amount of said license fee.

§ 1788. License to be conspicuously posted. Penalty. § 2, c. 115, 1895.

The license thus obtained shall be posted in a conspicuous place in the public warehouse so licensed. Every such license shall expire on the first day of August next following the issuance thereof, and no license shall run for a longer period than one year. Any person or association, who shall transact the business of public warehouseman without first procuring a license as herein provided, shall on conviction, be fined in a sum not less than twenty-five dollars for each and every day such business is carried on.

§ 1789. Bond to be filed. The proprietor, lessee or manager of any public warehouse or elevator in this state shall file with the commissioners of railroads a bond to the state with good and sufficient sureties to be approved by such commissioners in the penal sum of not less than five thousand nor more than seventy-five thousand dollars, in the discretion of the commissioners, conditioned for the faithful performance of their duty as public warehousemen and a compliance with all the laws of this state in relation thereto. One bond only need be given for any line of elevators or warehouses owned, controlled or operated by one individual, firm or corporation. Such bond, specifying the location of each elevator or warehouse operated by such individual, firm or corporation, shall be in a sufficient amount to protect the holders of outstanding tickets. § 5, c. 126, 1891. am'd.

§ 1790. Warehouse receipts, what to contain. All owners of such elevators and warehouses shall, upon the request of any person delivering grain thereat, give a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain, and shall state upon its face the quantity and grade fixed upon the same. All warehouse receipts shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. § 6, c. 126, 1891.

No warehouse receipt shall be issued except upon actual delivery of grain into such warehouse. No such warehouseman shall insert in any warehouse receipt issued by him any language in anywise limiting or modifying his liability as imposed by the laws of this state.

§ 7, c. 126, 1891.

§ 1791. What storage receipts shall express. Each storage receipt issued in this state shall expressly provide that at the option of the holder of such receipt the kind, quality and quantity of grain for which such receipt was issued shall be delivered back to him at the same place where it was received upon the payment of a reasonable charge per bushel for receiving, handling, storing and insurance charges, such charges to be fixed by express terms in the storage receipt at the time of receiving the grain at the elevator or warehouse and at the time of issuing the receipt; but no charges shall be made for cleaning grain unless such grain has been actually cleaned; and nothing in this section shall be construed to require the delivery of the identical grain specified in the receipt so presented, but an equal amount of the same grade, except wheat placed in special bins.

§ 8, c. 126, 1891.

§ 1792. Bailment, not a sale. Insolvency. 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 the receipt issued therefor provides for the delivery of a like 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 an action against such bailee, except actions by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at 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 by such warehouse.

§ 9, c. 126, 1891.

§ 1793. Larceny. Punishment. Each person and each 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 the last section, willfully neglect or refuse to deliver to the person making such demand, the full amount of grain of the grade or the market value thereof which such person is entitled to demand of such bailee, shall be deemed guilty of larceny.

§ 11, c. 126, 1891.

§ 1794. Rates of storage. The charges for storage and handling of grain shall not exceed the following rates: For receiving, elevating, insuring, delivering and twenty days' storage, two cents per bushel. Storage rates after the first twenty days, one-half cent for each fifteen days or fraction thereof, and not exceeding five cents for six months. The grain shall be kept insured at the expense of the warehouseman for the benefit of the owner.

§ 12, c. 126, 1891.

§ 1795. Penalty for violation of this article. Any person who shall knowingly cheat, or falsely weigh any wheat or other agricultural products, or who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of not less than two hundred dollars nor more than one thousand dollars and be imprisoned in the penitentiary for a period not exceeding one year, in the discretion of the court.

ERECTION OF GRAIN WAREHOUSES ON RAILROAD RIGHT OF WAY.

§ 1796. **Construction of warehouses on right of way.** Any two or more persons who have or shall by articles of agreement in writing associate themselves together under any name assumed by them for the purpose of operating a warehouse or elevator for the purchase, storage and shipping of wheat or other grain within this state, may make an application in writing to any railroad company or corporation organized under the laws of this state, or doing business therein, to be permitted to construct, maintain and operate a warehouse or elevator at any of its regular way stations upon its right of way, to be used for the purpose aforesaid, and the railroad company or corporation so applied to shall grant such application without regard to the capacity of such elevator or warehouse and without discrimination as to persons, and in the order in which such applications shall be presented. § 1. c. 189, 1890. am'd.

§ 1797. **Public warehouses, how rental to be determined.** All elevators or warehouses erected under the provisions of the last section shall be kept open for the transaction of business during such portion of the year as may be required by the laws of the state, or commissioners of railroads. The associations or corporations which shall avail themselves of the benefits of this section are declared to be public corporations, subject to legislative supervision and control at all times and in all particulars in which rights or powers are conferred upon them by the provisions hereof. Before the application hereinbefore mentioned need be granted by any railroad company or corporation, the association making the same shall pay or secure to such railroad company or corporation such compensation for the right, privilege or franchise demanded in such petition as may be agreed upon between the parties as a just and reasonable yearly rental therefor, or a fixed or certain amount to be paid in one sum in lieu of a rental to be paid annually for the use and occupation of the site occupied by such warehouse or elevator and the uses and privileges connected therewith. If they fail to agree upon such yearly rental, or upon a gross sum to be paid in lieu thereof, all further proceedings shall be had under the chapter on eminent domain in the code of civil procedure. § 2. c. 189, 1890. am'd.

§ 1798. **Side tracks to be provided by railroad company.** Every railroad company or corporation organized under the laws of this state, or doing business therein, shall upon application in writing provide reasonable side track facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart the railroad company when required so to do by the commissioners of

railroads shall construct and maintain a side track for the use of shippers between such stations.

§ 4, c. 189, 1890.

§ 1799. Rights and privileges of individuals. Individuals shall have the same rights and privileges under the provisions of the last three sections as associated persons, corporations and associations.

ARTICLE 26. — HABITUAL DRUNKARDS.

§ 1, c. 68, 1895.

§ 1800. Treatment of drunkards. Method of procedure. Any inhabitant of this state, who is of kin to, or a friend of an habitual drunkard as hereinafter defined, may petition the board of county commissioners of the county where such drunkard resides for leave to send such drunkard, at the expense of the county, to any reputable institute for the treatment of drunkenness, designated by a committee of three persons to be appointed by the governor; which petition shall set forth the name, age and condition of such drunkard; that such drunkard or those of his kin petitioning are not financially able to incur the expense of such cure, and that such habitual drunkard is willing and has agreed to attend such institute for the cure of drunkenness, which petition shall be verified by the person making such request, and shall contain, in addition thereto, the written agreement of such habitual drunkard, his desire to take such treatment, and the names of three reputable taxpayers in the county where such habitual drunkard resides, stating that they are familiar with the facts set forth in the petition, and with the financial circumstances of the drunkard and of the petitioner and think it a proper case for assistance by the board of county commissioners.

§ 2, c. 68, 1895.

§ 1801. Duties of county commissioners. When such petition is filed the board of county commissioners, if satisfied from examination that the facts set forth in the petition are true, that such drunkard has been a resident of the county for six months, and of his own free will desires to take such treatment, shall send such drunkard to some reputable institute for the treatment of such disease, which will treat the same at the lowest figure; but such board shall not be compelled to send such person to the institute making the lowest bid, unless, in its judgment, the best interests of such drunkard will be promoted thereby; and the board shall order that the expense for the treatment be paid out of the county treasury in the manner that other claims and bills against the county are paid. The treatment of such drunkard shall at all times be under the supervision of the board of county commissioners, who may at any time it deems proper, discontinue the treatment of any such drunkard, or change him from one institute to another, as to it shall seem best. No county shall be required to send the same person a second time at its expense to any such institute.

§ 3, c. 68, 1895.

§ 1802. Drunkard defined. A drunkard, as defined herein, includes a person who uses alcoholic, spirituous, malt, fermented or intoxicating liquors, morphia, laudanum, cocaine, opium or other narcotics to such a degree as to deprive him of a reasonable degree of self-control.

§ 4, c. 68, 1895.

§ 1803. May reimburse the county. Any person who shall be treated for drunkenness under the provisions of this article, and who desires to reimburse the county at whose expense he has been treated may pay to the county treasurer of such county the amount

expended for his treatment, and the treasurer shall give him a receipt for the amount so paid, which receipt shall state that such payment is for reimbursement as aforesaid, and the amount so paid shall be covered into the treasury of the county.

ARTICLE 27.—NEWSPAPERS QUALIFIED TO DO LEGAL PRINTING.

§ 1804. **Newspapers qualified to do legal printing.** Before any newspaper in this state shall be entitled to publish any legal notice of any nature or do any public printing for the state, or for any county, city or other municipality within the state, such newspaper must have been established at least six months and have been in regular and continuous circulation during that time with a bona fide circulation of at least one hundred and fifty regular and continuous subscribers. Such newspaper must contain at least four pages of five columns each, standard size in length and contain on an average not less than four columns of reading or news matter; provided, that in all counties hereafter organized all newspapers conforming otherwise to the provisions of this article shall be entitled to publish legal notices and do public printing from their inception. § 1, c. 120, 1890.

§ 1805. **Publisher to file affidavit.** It shall be the duty of the owner, or manager of any newspaper in this state before such newspaper can be awarded any contract for public printing of any nature whatsoever, or publish any legal notices of any kind or nature, to file with the county auditor of the county in which such newspaper is published a verified statement setting forth the number of regular and continuous subscribers, and the length of time such newspaper has been established and in general circulation. § 2, c. 120, 1890.

§ 1806. **Penalty.** Any person, association or corporation, publishing any legal notices or doing any public printing, contrary to the provisions of this article shall be liable to a fine of not less than twenty-five dollars nor more than two hundred dollars, and to a forfeiture of all pay for any such printing. § 3, c. 120, 1890.

§ 1807. **County printing, where to be done.** All county printing shall be done in the state and, if practicable, in the county ordering the same.

CHAPTER 23.

WOOL MARKET.

§ 1808. **Markets, how established.** If any city or village in this state shall in any year provide a building wherein not less than one hundred thousand pounds of wool may be stored free of charge from June fifteenth to August thirty-first, it may direct its clerk to notify the commissioner of agriculture and labor on or before May first, in such year, of the fact that provision has been made, stating the regulations established by such city for receiving, storing and marketing wool and the quantity of wool which will probably be marketed at such city in that year. § 1, c. 127, 1891.

§ 1809. **Proclamation by commissioner of agriculture and labor.** The commissioner of agriculture and labor shall thereupon make proclamation to the sheep raisers of this state, to the manufac- § 2, c. 127, 1891.

turers of woolen goods and to the wool buyers of this state and other states, by notices in newspapers, circulars and such other means as he shall deem most effective, that a wool market will be held at such city, naming the same, stating the beginning and duration of such market, the provision for free storage, the quantity of wool likely to be received and such other facts as he may deem proper for publication.

§ 3, c. 127, 1891.

§ 1810. Wool to be held free of liens, etc. Any person purchasing any wool while the same is stored in any building thus provided for between June fifteenth and August thirty-first, both inclusive, shall hold the wool so purchased free and clear of any and all liens, claims and incumbrances of which he does not have notice at the time he purchases and pays for the same, and such purchaser shall not be liable in any action either for the delivery of such wool or for the damages to the holder of any lien or incumbrance on such wool.

§ 4, c. 127, 1891.

§ 1811. Expenses of commissioner. The commissioner of agriculture and labor shall make a verified and itemized statement of his expenses and disbursements incurred under the provisions of this chapter and file the same with the state auditor, who shall thereupon issue his warrant on the state treasurer therefor, but such expenses shall not in any one year exceed in the aggregate the sum of one thousand dollars.

CHAPTER 24.

SOLDIERS AND SAILORS.

ARTICLE 1.—BURIAL.

§ 1, c. 151, 1887.

§ 1812. State to pay funeral expenses, when. 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 expenses of their funeral, shall be buried at the expense of this state; but such funeral expenses, including cost of burial lot, shall not in any case exceed the sum of fifty dollars.

§ 2, c. 151, 1887.

§ 1813. 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.

§ 3, c. 151, 1887.

§ 1814. Duty of county judge. Upon notice to the county judge of the death of any soldier, sailor or marine within his county it shall be the duty of such judge to appoint a suitable person to carry into effect the provisions of this article in reference to the burial of such deceased soldiers, sailors or marines, for which service the person so appointed shall receive a fee not to exceed three dollars. It shall also be the duty of such judge immediately to 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 such soldier, sailor or marine served, and request the secretary of war to 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 3, 1879; and when such headstone is so furnished it shall be the duty of the county judge or other person designated by him for such purpose to cause the grave of such soldier, sailor or marine to be marked with such headstone; and the expense of erecting the same, not exceeding in any case the sum of five dollars, shall be paid by the state.

§ 1815. Duty of other officers. All expenses under this article shall be approved, allowed and certified to in duplicate by the county judge of the county in which such soldier, sailor or marine died or is buried, which duplicate certificate shall be delivered by such judge to the county auditor of the county, the original of which shall be forwarded by him at once to the state auditor, the duplicate to remain on file in his office. Upon the receipt by the state auditor of such certificate he shall draw his warrant on the state treasurer in favor of the county judge for the amount specified therein, and the county judge shall pay the same to the person entitled thereto. § 4, c. 151, 1887.

§ 1816. Appropriation. There is hereby appropriated out of the state treasury a sum sufficient to carry out the provisions of this article. § 5, c. 151, 1887.

ARTICLE 2.—PREFERMENT FOR OFFICIAL APPOINTMENT.

§ 1817. Preferred for appointment. In each public department and upon all public works of the state and of the cities and villages therein, honorably discharged union soldiers and sailors of the late war shall be preferred for appointment, and age, loss of limb or other physical impairment which does not in fact incapacitate shall not be deemed to disqualify them, if they possess the requisite qualifications and business capacity necessary to discharge the duties of the position involved. § 1, c. 205, 1887.

§ 1818. Officials to comply with this article. All officials or other appointing power in the public service shall comply with the provisions of the last section. § 2, c. 205, 1887. am'd.

CHAPTER 25.

AMENDMENTS TO CONSTITUTION.

§ 1819. Amendments to be published. Whenever any amendment to the constitution of this state is referred to the legislative assembly to be chosen at the next general election after the session in which such amendment is first proposed, the same shall be published for three months previous to the time of making such choice in one weekly paper in each county in which a weekly paper is published, once in the first month, once in the second month and four times in the third month. § 1, c. 46, 1891.

§ 1820. Papers, how selected. The paper in which such publication is made shall be designated by the secretary of state. The secretary of state in making such designation shall as far as possible endeavor to select the paper having the largest circulation. § 2, c. 46, 1891.

- § 3, c. 46, 1891. **§ 1821. Fees.** The compensation for such publication shall be at the rate of twenty-five cents per square of twelve lines of solid brevier type or its equivalent to each newspaper designated to publish such amendment.
- § 4, c. 46, 1891. **§ 1822. Accounts, how audited.** The state auditor upon receipt of an account of the expenditure required by the provisions of this chapter, duly certified as correct by the secretary of state, shall draw his warrant on the state treasurer for the amount due each of such papers as shown by such account.

CHAPTER 26.

COUNTIES AND COUNTY OFFICERS.

ARTICLE 1.—ORGANIZATION OF COUNTIES.

- § 1, c. 40, 1885.
am'd. **§ 1823. Petition for organization.** Any unorganized county in this state having a population of at least one thousand bona fide inhabitants may become organized by presenting to the governor a petition signed by at least one hundred and fifty qualified electors of such county setting forth that they have the requisite number of inhabitants to form a county organization and requesting him to organize such county as hereinafter provided.

- § 2, c. 40, 1885.
am'd. **§ 1824. Duty of governor.** Whenever the qualified electors of any unorganized county in this state shall petition the governor as provided in the preceding section and the governor shall be satisfied that such county contains a population of at least one thousand bona fide inhabitants it shall be the duty of the governor and he is authorized to call an election in such unorganized county and fix one or more places in such county as the polling places therein and shall fix the time for holding such election; and the governor shall thereupon issue a notice of election, which notice shall be substantially in the following form:

Notice is hereby given that on the.....day of.....
18...at.....in the county of.....an election will be held for the following officers of such county in the organization thereof: (Name the officers to be elected), and also for the temporary location of the county seat of such county, at which election the polls 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 thisday of.....18....

.....
Governor.

Attest:

.....
Secretary of State.

- § 3, c. 40, 1885.
am'd. **§ 1825. Election of officers.** There shall be elected by the qualified electors of such unorganized county all of the officers of such county which are 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.
- § 4, c. 40, 1885.
am'd. **§ 1826. County seat selected, how.** The electors at such election are empowered to vote for and select a county seat for such

county temporarily, 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 receiving the highest number of votes shall be the temporary county seat.

§ 1827. Election precincts, how prescribed. Whenever the governor shall have made out and completed such notice of election he shall cause the same to be delivered to the clerk of the district court of the judicial subdivision to which such unorganized county is attached for judicial purposes at least fifty days prior to the time fixed for such election, and thereupon and at least forty days prior to the time fixed by the governor in the notice for such election such clerk shall take to his assistance the chairman of the board of county commissioners and register of deeds, who shall meet at the office of such clerk at the time fixed by him, and such officers or a majority of them shall thereupon, if the governor shall have fixed more than one place for holding the election in such unorganized county, divide such county into election precincts in accordance with such notice, regard being had for the convenience of the voters, and such clerk shall thereupon add at the foot of each certified copy of such notice of election a certificate signed by him under the seal of the court showing the division of such county into election precincts and the boundaries thereof as determined by such board; and such clerk shall cause such notice and certificate to be published for at least thirty days prior to such election in a newspaper of general circulation in such judicial subdivision, printed and published in the county where the court for such subdivision is held, and deliver to the sheriff or coroner of such county or other person designated by him five certified copies of such notice and the certificate at the foot thereof, which original notice shall be filed in the office of such clerk as a record therein. § 5, c. 40, 1885.
am'd.

§ 1828. Judges of election. It shall be the duty of such clerk, register of deeds and chairman of the board of county commissioners, or a majority thereof, at the meeting mentioned in the preceding section to appoint three capable and discreet persons possessing the qualifications of electors in such unorganized county to act as judges of election at each polling place in such county and thereupon such clerk shall make out and deliver to the sheriff, coroner or other person, after the appointment of such judges, a notice thereof in writing, directed to the judges of election so appointed and it shall be the duty of the sheriff, coroner or other person so appointed within ten days after receiving such notice to serve the same upon each of the judges so appointed. § 6, c. 40, 1885.
am'd.

§ 1829. Posting notices. The sheriff, coroner or other person to whom such notice of election is delivered as aforesaid shall put up in five of the most public places in each of the voting precincts in such unorganized county at least twenty days previous to the time of holding such election one copy of such notice with the certificate thereto and one shall be posted at the house where such election is authorized to be held. § 7, c. 40, 1885.
am'd.

§ 1830. Judges of election. Vacancies, how filled. If any person appointed to act as judge of election as aforesaid shall neglect or refuse to act in such capacity or shall not be present, the place of such person shall be filled by the qualified electors residing within the county or voting precinct, present at the election, and the persons so elected to fill such vacancy are vested with the same powers as if § 8, c. 40, 1885.
am'd.

appointed judges of election as provided for in this article. The judges of election shall choose two persons who are qualified electors to act as clerks of such election.

§ 9, c. 40, 1885.
am'd.

§ 1831. Election law to apply. All the provisions contained in the chapter on elections in this code, not inconsistent with the provisions of this article, shall apply to elections held under the provisions of this article.

§ 10, c. 40, 1885.
am'd.

§ 1832. Inspector of election to be appointed. The governor at the time of calling such election or at least thirty days prior to the time fixed for such election shall appoint an inspector of elections for each polling place in such 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 a state officer. Such inspector shall, before he enters upon the duties of his office, take and subscribe the oath of office required of civil officers, and also an oath that he is not and will not in any manner be directly or indirectly interested in the location of any county seat in such county and is not the owner of any land or interest therein situated in such county, which oath shall be filed in the office of the secretary of state.

§ 11, c. 40, 1885.
am'd.

§ 1833. Inspector to furnish ballot box and poll books. Such inspector shall furnish at such election a ballot box in due form for use thereat, but if he shall fail or neglect so to do, then any qualified elector at such election shall have authority to furnish such ballot box; and such inspector shall at the same time and place furnish the proper and necessary poll books for use at such election in the form provided by law, but if he shall neglect or fail so to do, any qualified elector is authorized to furnish and deliver the same to the judges of election.

§ 12, c. 40, 1885.
am'd.

§ 1834. Powers and duties of inspector. The inspector of election is authorized and required to attend at all times at the place for holding such election for the purpose of counting the votes cast thereat, challenging the vote of any person whose qualifications he may doubt, and to be and remain where the ballot boxes are kept at all times after the polls are opened until each vote cast at such election has been counted and until the canvass of such votes is completed and the proper certificate or returns made by the judges and clerks of election, and personally to inspect and scrutinize from time to time on the day of election the manner in which the voting is done and the manner in which the poll books and tally sheets therein are kept; the inspector of elections is also required personally to scrutinize and assist in the count and canvass of each ballot cast in the precinct for which he is inspector and to make out and deliver to the clerk of the district court a statement as to the truth or accuracy of the poll books and the truth or fairness of the election and canvass of votes and whether in his opinion there was illegal voting at such election, and, if so, the extent of such illegal voting and the nature and character thereof, which report shall remain on file in the office of the clerk of such court.

§ 14, c. 40, 1885.
am'd.

§ 1835. Penalty for illegal voting. If any person shall interfere with the clerks, judges or inspectors of election in the exercise of their duties or shall interfere, hinder, molest or threaten to molest any such officer in the discharge of his duties or shall cast any illegal vote at such election, he shall be deemed guilty of a felony and shall upon conviction thereof be punished as provided in section 1839.

§ 1836. **Ballots to be numbered.** The ballots shall be folded by the voters and delivered to one of the judges of election, and if the judges and inspector or a majority of them are satisfied that the person offering the vote is a legal voter, the clerk shall enter the name of the voter and his proper number under the proper heading in the poll books, and one of the judges shall receive and place such ballot in the ballot box. § 15, c. 40, 1885. am'd.

§ 1837. **No adjournment. Ballots, how preserved.** 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 inspector of elections 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 counted and strung as aforesaid the thread shall be tied in a knot, which knot shall be covered by wax, as directed by the inspector and thereupon it shall be inclosed in an envelope and carefully sealed up by the judges of election in the presence of the inspector and immediately placed in the ballot box together with the poll books, which ballot boxes shall be carefully locked up and sealed by the judges of election in the presence of such inspector before the same shall be delivered to them or either of them as provided in this article. § 16, c. 40, 1885.

§ 1838. **Return of poll books.** After the canvass of the votes has been completed the judges of election shall inclose and seal one of the poll books and under cover direct the same to the county auditor of the county to which such unorganized county is attached for judicial purposes and the book thus sealed shall thereupon be delivered to the inspector of elections who shall deliver the same to such county auditor within three days after the closing of the polls and such poll book shall be subject to inspection at any time thereafter as a public record. The other poll book inclosed in the ballot box as aforesaid together with the ballots inclosed and sealed therein by such judges and inspector shall, within the same time, be deposited by such inspector with the clerk of the district court for such judicial subdivision and the ballots and ballot boxes with the poll book therein shall be kept carefully closed and sealed until ordered opened by the district court of such subdivision or the judge thereof. § 17, c. 40, 1885. am'd.

§ 1839. **Penalty for misconduct of officers of election.** If any of the inspectors, judges or clerks of election shall in any manner interfere with any of the ballots, ballot boxes or poll books, other than as provided by law, or shall willfully aid or assist in making any false count of the ballots, or willfully falsify the poll books in any manner, or willfully make any false return of the votes, or if any inspector of elections shall willfully refuse or neglect to deliver such poll book and ballot boxes to the officers provided for in this article within the time herein specified, safe and with the seals unbroken, or if any inspector 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 article, 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 penitentiary for not less than one year nor more than five years. § 18, c. 40, 1885. am'd.

§ 1840. **Canvass of votes.** The county auditor 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 § 19, c. 40, 1885. am'd.

to his assistance the county judge, the clerk of the district court and a majority of the county commissioners of such county, who shall proceed to open such returns and make an abstract of the votes cast at such 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 such county auditor immediately to make out a certificate of election to each of the persons receiving the highest number of votes for such county offices and deliver such certificate to the person so elected; and immediately after canvassing the returns and making an abstract of the votes such county auditor shall make a certified copy of each abstract and forward the same to the secretary of state, and when the votes are canvassed for county seat the place receiving the highest number of votes shall be the temporary county seat and such place shall be so declared the county seat by such board or a majority of the members thereof.

§ 20, c. 40, 1885.
am'd.

§ 1841. Officers to qualify. The officers elected under the provisions of this article shall qualify in the manner provided by law within twenty days after the canvass 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 and proceed to the discharge of their duties as such county commissioners in the organization of such county; 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 required by law for filling vacancies.

§ 22, c. 40, 1885.
am'd.

§ 1842. Power of county commissioners. The county commissioners elected or appointed under the provisions of this article shall have power to divide the county into three commissioner districts which shall be numbered from one to three, and such districts shall not be changed oftener than once in three years and then only at a regular session of the board. Three commissioners shall be elected, one from each of such 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. The inspectors 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 each mile actually and necessarily traveled, the account thereof to be approved by the governor and audited and paid out of the state treasury.

§ 23, c. 40, 1885.
am'd.

§ 1843. Compensation of other officers. The officer or person serving the notices on the judges of election and posting the same as provided in this article shall receive for his services the amount authorized by law for like services performed by the sheriff in organized counties; and the clerk of the district court and other county officers required to perform the services mentioned in this article shall receive two dollars per day for the time actually and necessarily employed; and the printers and publishers shall receive the legal rates for the publication of such notices; all of which sums shall be audited and paid by such unorganized county as soon as such county is organized under the provisions of this article.

§ 24, c. 40, 1885.
am'd.

§ 1844. Failure to post notices not to invalidate. A failure to publish or post the notices provided for in this article shall not invalidate an election held under the provisions hereof; but, if any

officer shall willfully fail to perform any of the duties required of him he shall be deemed guilty of a misdemeanor.

§ 1845. **Proceedings set aside, when.** If from any cause the whole election held under the provisions of this article shall be set aside by the court or a judge thereof and declared invalid, the governor shall have authority to call a new election and such county shall be organized as in this article provided. § 25, c. 40, 1885, am'd.

§ 1846. **Annexed territory part of county.** Such portions 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. § 5, c. 21, Pol. C.

ARTICLE 2. — CHANGING COUNTY LINES.

§ 1847. **County lines, how changed.** When a majority of the legal voters residing in any territory, not less than one congressional township, shall petition the board of county commissioners of their county, and also the county to which they desire such territory to be transferred for leave to have such territory transferred to such county, it shall be the duty of the boards of county commissioners so petitioned to order an election for such purpose in their respective counties to be held within three months from the time of receiving such petition; which election shall be governed by the laws relating to general elections, and the returns of such election shall be made to the secretary of state.

§ 1848. **Notices of election, how posted.** Notices of such election shall contain a description of the territory proposed to be transferred, the name of the county from and to which such transfer is intended to be made and shall be posted as required for general elections.

§ 1849. **Taxes. Officers. Ballots. Transfer of territory.** The ballots to be used at such election shall be in the following form: "For transferring territory," and "against transferring territory." If a majority of the voters voting upon such question in each of such counties, shall be for transferring territory then such territory shall be transferred to and become a part of the county to which it is proposed to transfer the same on and after the first day of March succeeding such election, and shall be subject to all the laws, rules and regulations thereof; provided, that the assessment and collection of taxes and judicial and other official proceedings commenced prior to such first day of March shall be continued, prosecuted and completed in the same manner as if no such transfer had been made; and provided, further, that all township officers within such transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire.

§ 1850. **Area and population.** The area of no county shall be reduced under the provisions of this article to less than twenty-four congressional townships nor the population to less than one thousand bona fide inhabitants.

§ 1851. **Debts, how paid by territory transferred.** No territory transferred under the provisions of this article shall be released from the payment of its proportion of the debts of the county from which it was transferred; and such proportionate indebtedness from such transferred territory shall be collected by the county

to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred, such rate to be ascertained by the certificate of the county auditor of such last named county, and when so collected the same shall be paid over to the county entitled thereto.

§ 1852. **Same.** When the county to which such territory is transferred is also indebted, the county board of such county shall release such transferred territory from the payment of such indebtedness to an amount equal to that which such territory is required to pay to the county from which it was transferred.

§ 1853. **Election, how called.** When a majority of the legal voters of any territory less than one-half of one congressional township shall petition the boards of county commissioners as above provided, such boards may in their discretion order elections to be held as herein provided, and in any case where elections have been held under this article and the result has been adverse to the petitioners, it shall be in the discretion of such boards of county commissioners to order another election on a petition to transfer the same territory presented within three years from the time of holding such former election.

ARTICLE 3.—DIVISION OF COUNTIES.

§ 1, c. 38, 1887.
am'd.

§ 1854. **Electors may petition.** Whenever it is desired to form a new county out of one or more of the then existing counties, and a petition praying for the formation of such new county describing the territory proposed to be taken for such new county together with the name of such proposed new county, signed by a majority of the legal voters residing in the territory to be stricken from such county or counties, shall be presented to the board of county commissioners of each county to be affected by such division, and it appearing that such new county can be constitutionally formed, it shall be the duty of such boards of county commissioners to make an order providing for the submission of the question of the formation of such new county to a vote of the people of the counties to be affected, at the next succeeding general election, and notice thereof shall be given, the votes canvassed, and the returns made as in case of the election of members of the legislative assembly; and the form of the ballot to be used in the determination of such question shall be "for new county" and "against new county."

§ 5, c. 38, 1887.
am'd.

§ 1855. **Governor to appoint county commissioners.** If it shall appear that a majority of all votes cast at such election in each of the counties interested is in favor of the formation of such new county, the county auditor of each of such counties shall certify the same to the secretary of state, stating in such certificate the name, territorial contents and boundaries of such new county, whereupon the secretary of state shall notify the governor of the result of such election, whose duty it shall be to appoint three persons, residents of the county so formed, possessing the qualifications of electors, who will accept and qualify in such office, county commissioners for such new counties, who shall hold their office until the first general election thereafter and until their successors are elected and qualified; and upon the qualifying of such commissioners such county shall be deemed to have existence as such and be governed by the laws of the state relating to counties.

§ 1856. County commissioners to appoint county officers§ 6, c. 38, 1887.
am'd.

The county commissioners appointed under the provisions of the preceding section, after having qualified according to law, shall appoint all the county officers of the county so organized, who after having qualified shall hold their offices until the first general election thereafter and until their successors are elected and qualified; provided, that all justices of the peace and constables in office within the boundaries of any county organized under this article shall continue to hold such offices in such new county during the remainder of their term, and shall give bonds to the county organized under this article of the same amount and in the same manner as to the original county.

§ 1857. County seat, how located.§ 7, c. 38, 1887.
am'd.

The county commissioners of such county shall have power temporarily to 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. Immediately after the selection of such county seat either by the county commissioners or by the canvass of returns of votes the county commissioners shall issue their proclamation announcing such fact and publish the same in a newspaper published in such county if there is one, and if not, by posting a copy thereof in a public place in each election precinct in such county.

§ 1858. Commissioners governed by existing law.

§ 8, c. 38, 1887.

In all matters not specially provided for in this article the county commissioners appointed as hereinbefore provided shall be governed by the laws then existing.

§ 1859. Election governed by general law.

§ 9, c. 38, 1887.

All elections under this article, where not otherwise provided, shall be conducted in the same manner as required by law for general elections, and no refusal or neglect on the part of any official to perform his lawful duties in connection therewith shall in anywise affect the validity of such election.

§ 1860. Records to be transcribed.§ 10, c. 38, 1887.
§ 1, c. 38, 1893.

When a new county is organized in whole or in part from an organized county or from territory attached to such organized county for judicial purposes, it shall be the duty of the commissioners of such new county to cause to be transcribed in the proper books all the records of deeds or other instruments relating to real estate in such new county, and all contracts heretofore made by any board of county commissioners for the transcribing of any such records are hereby made valid and all records transcribed thereunder or under the provisions of this section shall have the same effect in all respects as original records, and any person authorized by such boards of county commissioners to transcribe such records shall have free access at all reasonable times to such original records for the purpose of transcribing the same.

§ 1861. New counties, indebtedness of.

§ 11, c. 38, 1887.

Any county organized under this article shall assume and pay as herein provided a just proportion of the indebtedness of the county from which it is segregated, based upon the last assessed valuation of such 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 the duty of the commissioners of both the county organized under this article 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 appoint-

ment of county commissioners by the governor as provided for in this article. 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:

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 article shall pay a portion of, in the proportion hereinbefore specified, and it shall be the duty of such commissioners to ascertain and fix the amount the county organized under this article shall assume and pay to the county from which it segregates.

§ 12, c. 38, 1887.

§ 1862. Division of property. All moneys belonging to special funds such as fire, school, road and other funds and property owned by the districts within the boundaries of a county organized under this article, on hand at the time of the settlement provided for in the preceding section, in a county from which a portion segregates, shall be turned over in full by the treasurer of the original county to the treasurer of the county organized under this article and shall be duly receipted for by the latter and placed to the credit of the districts within his county to which they properly belong.

§ 13, c. 38, 1887.

§ 1863. Moneys turned over to new county, when. Any county in which the amount of public funds on hand at the time of the settlement provided for in section 1861 exceeds the total of its outstanding indebtedness shall, after deducting such outstanding indebtedness and after making the deductions provided for in section 1861 from the amount of such public funds on hand, pay over to the county segregated from it and organized under this article 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 1861 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 article and the amount so received by the latter shall be by him placed to the credit of the proper funds of his county.

§ 14, c. 38, 1887.
am'd.

§ 1864. Commissioners to redistrict counties. The county commissioners of a county from which a portion segregates under this article shall immediately after such segregation redistrict their county into the districts provided for by the laws then existing and shall fill the vacancies occasioned by such segregation in the manner provided by law for filling vacancies.

§ 1865. **Districts renumbered and renamed.** School districts and road districts within counties affected by this article 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. § 15, c. 38, 1887.

§ 1866. **When district liable for bonds.** When the boundaries of any school district or school township have been changed under the provisions of this article that portion of such school district or school township in which the school houses and other property remain shall be liable for the payment of 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 liable for the payment of the bonds, if any, of the school district or school township to which such portion formerly belonged. § 16, c. 38, 1887.

§ 1867. **Validity of bonds.** The validity of bonds issued by school districts or school townships prior to the division of any county under this article shall in nowise be affected by such division nor by the renumbering or renaming of the school district or school township that issued them. § 17, c. 38, 1887.

§ 1868. **Fees of county commissioners.** County commissioners while in the discharge of their duties as provided for in the preceding sections of this article shall receive the same compensation as is allowed by law for the performance of their ordinary official duties. § 18, c. 38, 1887.

§ 1869. **Indebtedness of new county.** The amount of indebtedness of a county organized under this article as ascertained by the two boards of county commissioners as aforesaid shall be paid to the county from which it segregates in the bonds of the new county thus segregated as hereinafter provided. § 19, c. 38, 1887.

§ 1870. **When bonds to be dated.** 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 in section 1861; shall be issued for a period corresponding with the time or term 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 such original county shall have authority to exchange such bonds for an equal amount of obligations of its own of the same class. § 20, c. 38, 1887.

§ 1871. **County treasurer to keep bond register.** The county treasurer of a county issuing bonds under the provisions of this article 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 county auditor of his county and shall be and remain a part of the records of his office. § 21, c. 38, 1887.

§ 1872. **Commissioners to issue liquidating bonds.** The board of county commissioners of a county organized under this article is empowered and directed to issue such liquidating bonds in § 22, c. 38, 1887.

denominations as may be required by the old county, not to exceed one thousand dollars each, and deliver the same to the county auditor of the old county who shall receipt therefor, affixing the seal of his office to such receipts, and the county auditor of the county organized under this article shall enter such receipts at large upon the records of the board of county commissioners and note the same in the bond register of his county.

§ 23, c. 38, 1887.

§ 1873. Commissioners to levy tax. The board of county commissioners of a county issuing bonds under the provisions of this article shall, for each year after the date of such bonds, levy and cause to be collected a tax sufficient to pay the interest on such 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 such 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, that public notice shall be given by such board in a newspaper, if one is published within the county, setting forth that certain bonds, giving their number and description, will be redeemed by such county, and naming the date of such redemption,

§ 24, c. 38, 1887.

§ 1874. Interest for redemption of bonds. The money collected for the payment of the interest or principal of said bonds shall not be used for any other purpose until such bonds are redeemed; any surplus thereafter shall be placed in the county general fund.

§ 25, c. 38, 1887.

§ 1875. Revenue of counties. The authority of any county, from which a portion segregates under the provisions of this article, for the collection of revenue within the boundaries of the portion segregating, shall cease from the date upon which the two boards of county commissioners under the provisions of section 1861 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 such new county, shall remain the same and shall be payable to and collectible by the lawful authorities of the latter only.

§ 26, c. 38, 1887.

§ 1876. Judicial subdivision. Any county organized under the provisions of this article 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 its organization.

§ 27, c. 38, 1887.
am'd.

§ 1877. Judge to appoint term of district court. The judge of the judicial district in which a county organized under this article is created a legal subdivision of his district under the provisions of the last section shall appoint and hold at least two terms of the district court each year at the county seat of such county.

§ 28, c. 38, 1887.
am'd.

§ 1878. Venue, when changed. In all actions or proceedings, civil or criminal, for the prosecution of a crime committed or a cause of action arising within the boundaries of any judicial subdivision created under the provisions of this article, and properly triable in such subdivision under the provisions of the codes of civil and criminal procedure, the venue thereof shall be changed to the new county by order of the court 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 the state; but if neither can

conveniently be found therein, then such change of venue may be made upon filing such demand with the clerk of the district court.

§ 1879. Writs, bonds and recognizances. All process, writs, bonds, notices, appeals, recognizances, papers and proceedings in actions changed to a new county under this article, issued and made returnable to the district court of the county from which a portion has been segregated and organized under this article prior to the creation of such legal subdivision, shall be taken and considered as made, taken and returnable to the district 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 action shall be transmitted by the clerk of the district court of the old to the clerk of the district court of the new county. § 29, c. 38, 1887.

ARTICLE 4. — COUNTY SEATS.

§ 1880. County seat, removal of. Whenever the inhabitants of any county in this state desire to remove the county seat of the county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such removal and that an election be held to determine whether or not such removal shall be made. Such petition must be verified by the affidavit of each of the signers thereof, stating that he is a resident of the county, a qualified elector therein and that he personally signed his name thereto knowing the contents and purpose of the petition.

§ 1881. Commissioners to submit question to vote, when. If the petition is signed by qualified electors of the county equal in number to at least two-thirds of all the votes cast in the county at the last preceding general election the board must at the next general election submit the question of removal to the electors of the county.

§ 1882. Notice of election. Notice of such election, clearly stating its object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

§ 1883. Ballot, how marked. Notice of result. In voting on the question, each elector must vote for the place in the county which he prefers by placing opposite the name of the place the mark X. When the returns have been received and compared and the result ascertained by the board, if two-thirds or more of all the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the result by posting notices thereof in all the election precincts in the county and by publishing a like notice in a newspaper published in the county at least once a week for four weeks.

§ 1884. County seat, when deemed changed. In the notice provided for in the last section the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day thus named in the notice, the place chosen shall be the county seat of the county.

§ 1885. Statement of result of election, where filed. Whenever any election has been held as provided in this article, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county auditor, and whenever the board gives the notice prescribed in the last section, it must transmit a certified copy thereof to the secretary of state.

§ 1886. Election held only once every four years. When an election has been held and at least two-thirds of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter.

§ 1887. Subsequent removal, petition for. When the county seat of a county has been once removed by a two-thirds vote of the people of the county, it may be again removed from time to time in the manner provided in this article; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by the qualified electors of the county equal in number to at least two-thirds of all the votes cast at the last preceding general election, nor unless at such election, when ordered, two-thirds of all the votes cast are in favor of some other place as the county seat of the county, and such election, when so ordered, shall take place at the first general election held thereafter, nor must two elections to effect such removal be held within four years.

ARTICLE 5. — CORPORATE POWERS AND LIABILITIES.

§ 13, c.21, Pol C.

§ 1888. County a corporate body. Powers. Each organized county is a body corporate for civil and political purposes only and as such may sue and be sued, contract and be contracted with, 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 recover possession of such lands or to enforce the payment of the purchase money shall be instituted in the name of the proper county.

§ 14, c.21, Pol.C.
§ 1. c. 54, 1881.

§ 1889. Judgments against counties, 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 such 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 nor to seizure or sale upon execution or other process of any court.

ARTICLE 6. — COUNTY OFFICERS.

§ 15, c.21, Pol.C.
§ 3. c. 33, 1883.
am'd.

§ 1890. Number and election of. Each organized county shall have the following officers: One county auditor, one register of deeds, one clerk of the district court, one state's attorney, one sheriff, one county judge, one county treasurer, one county surveyor, one coroner, one county superintendent of schools, four justices of the peace and four constables. And there shall be three or five county commissioners as hereinafter provided who shall constitute the board

of county commissioners. Such officers shall be chosen by the qualified electors of their respective counties at the general election in each even numbered year, except the commissioners, who shall be chosen by the electors of their respective districts, of which district such commissioners shall be qualified electors.

§ 1891. Sheriff and treasurer eligible two terms only. § 1. c. 103, 1889.
The sheriff and county treasurer shall not be eligible for election to such offices for more than two successive terms of two years each.

ARTICLE 7. — COUNTY COMMISSIONERS.

§ 1892. Number of commissioner districts, how determined. § 1. c. 48, 1890.
The number of county commissioners of any county within this state may be increased to five or reduced to three in the manner following: Whenever the legal voters of a county equal to one-third of the number of legal votes cast at the last preceding general election petition the board of county commissioners to call an election for determining the number of commissioners which shall constitute such county board, it shall be the duty of the commissioners to call a special election and submit such question to a vote. Notice of such election shall be given by publication in the official newspaper of the county, or by posting notice, for a period of at least twenty days. Such election shall be held not less than sixty days prior to a general election. If the question is for an increase to five commissioners, the proposition shall be submitted in this form:

“For five commissioners.”

“Against five commissioners.”

If it is for a reduction to three, the proposition shall be in this form:

“For three commissioners.”

“Against three commissioners.”

The returns of such election shall be canvassed by the board of county commissioners within one week after such election.

§ 1893. Districts, how formed. Commissioners, how designated. § 2. c. 48, 1890.
When the returns of such election show a majority of all the legal votes cast to be for an increase from three to five it shall be the duty of the board of county commissioners within ten days after the votes have been canvassed to divide the county into five districts. The districts shall be numbered from one to five, those last created being designated fourth and fifth respectively. At the ensuing general election commissioners for such additional districts shall be elected, the commissioner in the fourth district for two years and in the fifth district for three years; thereafter they shall hold their terms of office for three years. The tenure of office of the existing board of county commissioners shall not be affected. The district which each commissioner shall represent shall be designated by such board. When the special election results in a majority for a decrease from five to three the existing county board shall at the end of the first two expiring terms of the same year declare such districts vacant and at their first regular meeting thereafter proceed to divide the county into three commissioner districts, and in such division designate the district which each of the three remaining commissioners shall represent.

§ 1894. Commissioner districts redistricted, when. § 1. c. 34, 1895.
Whenever a majority of the legal voters of any county commissioner district shall petition the board of county commissioners to change the boundaries of the commissioner districts, it shall be the duty of the

county commissioners at their next regular meeting to consider such petition and if it shall appear that the commissioner districts of such county are not reasonably equal in population, they shall proceed at once to redistrict such county into commissioner districts.

§ 2, c. 34, 1895. **§ 1895. Duty of commissioners.** In redistricting any county it shall be the duty of the county commissioners to make the districts as regular and as compact in form as practicable and as equal in population as possible, as shall be determined by the votes cast at the last preceding general election, but no new district shall be so formed that any two of the then acting commissioners shall reside in the same district, and no county shall be redistricted oftener than once in three years.

§ 16, c. 21, Pol. C. **§ 1896. Term of office of commissioners.** The commissioners shall hold their office for the term of three years, except as provided by law 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.

§ 17, c. 21, Pol. C. **§ 1897. 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 auditor; and the impression of such seal by the stamp shall be sufficient sealing in all cases where sealing is required.

§ 18, c. 21, Pol. C. **§ 1898. Meetings of board, time and place of.** The county commissioners shall meet and hold sessions for the transaction of business at the court houses in their respective counties, or at the usual places of holding court, on the first Mondays 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 interests of the county demand it, upon giving five days' notice of the time and object of such meeting by posting up notices in three public places in the county or by publication in one newspaper in the county; provided, that in case of a vacancy in the office of the county auditor the chairman of the board shall have power to call a special session for the purpose of filling the same.

§§ 19, 20, c. 21, Pol. C. am'd. **§ 1899. Chairman, duties of.** At the first meeting of the board each year they shall elect one of their number chairman who shall act as chairman of such board 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 shall elect another chairman. It shall be the duty of the chairman to preside at the meetings of the board; and all orders made by the board and all warrants drawn on the county treasurer, except warrants for salaries of county officers, shall be signed by the chairman and attested by the county auditor.

§ 21, c. 21, Pol. C. **§ 1900. Tie vote defers decision.** When the board is equally divided on any question it shall defer a decision until the next meeting at which time the matter shall be decided by a majority of the board.

§ 22, c. 21, Pol. C. **§ 1901. Proceedings. Copies as evidence.** Copies of the proceedings of the board duly certified and attested by the county auditor under seal shall be received as evidence in all courts of this state.

§ 1902. **Power of board to preserve order.** The board shall have 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; and it may enforce obedience to its orders by attachment or other compulsory process, and when fines are assessed by it 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. § 23, c.21, Pol.C.

§ 1903. **Boards to keep record books.** They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges; and all orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively as allowed from the first day of January to the thirty-first day of December in each year; also a book for the entry of all proceedings relating to bridges and the establishment, change or discontinuance of roads and a book for the entry of warrants on the county treasurer showing the number, date, amount and name of the payee of each warrant drawn, which book shall 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. §§ 25-27 c. 21, Pol. C.

§ 1904. **Warrants canceled, when. Description of in minutes.** The board is 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 or more next preceding the regular meeting on which such cancellation takes place. Such board shall before canceling and destroying any such warrants cause to be entered in the minutes of its proceedings a brief description thereof containing the name of the payee, and the number, date and amount of each warrant to be destroyed. §§ 1,2, c.37, 1887.

§ 1905. **Board, powers of.** It shall have power to institute and prosecute civil actions in the name of the county for and on behalf of the county. It shall also 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 reciting the order and signed and acknowledged by him for and on behalf of the county; provided, that the question of the sale of such public grounds or lands shall first be submitted to a vote of the people of the county as hereinafter provided and sanctioned by a majority vote thereof. §§ 28, 29, c. 21, Pol. C.

§ 1906. **Additional powers of board.** In addition to the powers hereinbefore mentioned such board shall have power: § 29, c.21, Pol.C. am'd.

1. To levy a tax not exceeding the amount authorized by law and to liquidate indebtedness.

2. 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.

3. To construct and repair bridges and to open, lay out, vacate and change highways in the cases provided by law; to establish election precincts in its county and to appoint the judges of election in the

cases provided by law; and to equalize the assessments of the county in the manner provided by law.

4. To furnish the necessary blank books, blanks and stationery for the clerk of the district court, county auditor, register of deeds, county treasurer, county judge, sheriff and state's attorney of its county, to be paid out of the county treasury; also a fire proof safe, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers and papers pertaining to the business of the board.

5: To do and perform such other duties as now are or may hereafter be prescribed by law.

§ 30, c.21, Pol.C.
am'd.

§ 1907. Board to superintend fiscal affairs of county. It shall superintend the fiscal affairs of the county and secure their management in the best manner. It shall keep an account of the receipts and expenditures of the county and on the first Monday of July annually it 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 it shall have the same published in at least one newspaper in its county. If there is no newspaper in the county the same shall be posted up at the usual place of holding its sessions.

§ 1, c. 72, 1891.

§ 1908. Special tax levy for immigration. The board is authorized at the time fixed by law for the levying and assessment of taxes to levy a tax not exceeding one-fourth of one mill on the dollar upon the assessed valuation of all the property in the county upon presentation of a petition signed by one-third of the legal voters of the county, taking the total vote at the last general election for a basis, the proceeds of which shall be used solely for the purpose of promoting and assisting immigration to this state.

§ 2, c. 72, 1891.

§ 1909. Immigration fund. The funds provided to be raised in accordance with the last section shall be denominated the "immigration fund" and shall be kept separate and distinct by the county treasurer and shall be expended by and under the direction and control of the board of county commissioners at such time and in such manner as is by such commissioners deemed best for the purpose of securing immigration to the state.

§ 31, c.21, Pol.C.

§ 1910. Board may procure original field notes. The board is authorized to procure for its county a copy of the field notes, as soon as practicable, of the original survey of its 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, the same to be kept open in the office of the county auditor and the field notes to be deposited therein.

§ 32, c.21, Pol.C.
am'd.

§ 1911. Board to submit extraordinary outlay to a vote. It 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 the question of the construction of any court house, jail or other public building, or whether it will aid in constructing or construct any highway or bridge.

§ 34, c 21, Pol.C.
am'd.

§ 1912. Mode of submitting propositions. The mode of submitting questions to the people contemplated by the last section shall be the following: The whole question including the sum desired to be raised and the amount of the tax desired to be levied or the

rate per annum, shall be published at least four weeks in some newspaper published in the county. If there is no such newspaper the publication shall be made by posting 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 questions shall be voted upon and the form in which the question will be submitted; and a copy of the question submitted shall be posted up at each voting place during the day of election.

§ 1913. Proposition to tax must accompany question submitted. When the question submitted involves the borrowing or expenditure of money such proposition must be accompanied by a proposition to levy a tax for the payment thereof in addition to the usual taxes required to be levied; and no vote adopting the question proposed shall be valid unless it likewise adopts the amount of tax to be levied to meet the liability incurred. § 35, c. 21, Pol. C. am'd.

§ 1914. Tax not to exceed three mills annually. The rate of tax levied in pursuance hereof shall in no case exceed three mills on the dollar on the assessed valuation of the county in any 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 the dollar of the valuation; and any special tax or taxes levied in pursuance of this article, after becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of law. § 36, c. 21, Pol. C.

§ 1915. Record of vote. Board cannot rescind. Such commissioners upon being satisfied that the above requirements have been substantially complied with and that a majority of the votes cast are in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing a 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. § 37, c. 21, Pol. C.

§ 1916. Money to be specifically applied. Money raised by the county commissioners in pursuance of the last five sections is specifically appropriated and constitutes a fund distinct from all others, in the hands of the county treasurer, until the obligations assumed are discharged. § 38, c. 21, Pol. C.

§ 1917. Board may transfer unexpended balances, when. The board may at any regular meeting thereof transfer to the general fund any unexpended balances which are or may be in the county treasury belonging to the road and bridge fund or penalty and interest fund; also any balance remaining in any funding bond fund prior to the passage of this law, when in its opinion such transfer will be beneficial to the county. No such transfer shall be made until the object for which such fund was created or set apart has been accomplished and all claims against such fund paid; or if belonging to any fund created for the purpose of paying bonded indebtedness or interest thereon, until such bonds have been redeemed and interest paid. § 1, c. 175, 1890.
§ 1, c. 3, 1891.

§ 1918. Special funds may be transferred, when. 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 § 1, c. 144, 1887.

for the purpose for which it was created, it shall be lawful for the board to transfer such balance to any other fund of the county or subdivisions to which such balance belongs.

§ 39, c. 21, Pol.C.
am'd.

§ 1919. Warrants, how signed and attested. All warrants upon the county treasury, except warrants for salaries of county officers, 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 auditor with the county seal affixed, and shall designate the fund upon which they are drawn. Warrants for salaries of county officers may be drawn by the county auditor from time to time as such salaries become due and payable.

§ 40, c. 21, Pol.C.

§ 1920. Sessions of board to be public. The board shall hold its sessions with open doors and transact all business in the most public manner and, if the county has no courthouse or the courthouse shall be unfit or inconvenient, such sessions may be held at any other suitable place at the county seat. All matters pertaining to the affairs of the county shall be heard by the board in session only, but they may continue any business from any regular session to an intermediate day.

§ 41, c. 21, Pol.C.

§ 1921. Record, what constitutes. The books required to be kept by this article shall constitute the records of the board of county commissioners.

§ 42, c. 21, Pol.C.
§ 1, c. 41, 1885.

§ 1922. Board to provide offices, court room, jail, etc. In any county where there is no courthouse or jail erected by the county or where those erected have not sufficient capacity, it shall be the duty of the board to provide a court room and jail, also offices for the following named officers: Sheriff, treasurer, register of deeds, auditor, clerk of the district court, state's attorney, county judge and county superintendent of schools; to be furnished by such county in a suitable building, at 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 courthouse. It shall also provide the courts appointed to be held therein with attendants, fuel, lights and stationery suitable for the transaction of their business. If the board neglects, the court may order the sheriff to do so and the expense incurred by him in carrying such order into effect, when certified by the court, shall be a county charge.

§ 43, c. 21, Pol.C.

§ 1923. To erect and repair buildings from current revenue. The board shall have authority under the provisions of this article to provide for the erection and repairing of courthouses, jails and other necessary buildings within and for the county and to make contracts on behalf of the county for the building and 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 electors 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.

§ 44, c. 21, Pol.C.

§ 1924. Duty to 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, 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.

§ 1925. Contracts let only on competitive bids. The board shall cause an advertisement for bids for the erection of such building to be published for at least three months prior to the opening of the bids in some newspaper published in the county and in such other newspaper in the state 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 building, also the time when the bids will be opened and passed upon by the board, which must be at one of its regular sessions. 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. Such board may further require a bond to accompany each bid, conditioned that the bidder will enter into a contract with approved sureties for the performance of the work in accordance with the plans and specifications in case his bid is accepted. The provisions of this section shall apply to all contracts for fuel, stationery and all other articles for the use of the county, or labor to be performed therefor, when the amount to be paid for the same during any year exceeds the sum of one hundred dollars; provided, that in all such cases advertisement for bids therefor need not be for more than three consecutive weeks in some weekly newspaper published in such county, and provided also, that all contracts for the furnishing of stationery, blank books and supplies generally for all county officers shall be let at the first regular meeting in April to run for the period of one year.

§ 45, c. 21, Pol.C.
§ 1, c. 49, 1889.

§ 1926. Unused buildings may be destroyed, when. In any county containing a population of less than six thousand inhabitants as shown by the last state or federal census it shall be lawful for the board of county commissioners when petitioned by one hundred or more of the voters of such county, to sell or repair any building owned by the county and not used for county purposes and which is unsafe to remain standing, or to cause such building to be torn down and to do any thing in the premises which a private owner might or could do with his property.

§ 1, c. 44, 1893.
am'd.

§ 1927. Appeals lie from decisions of board. From all decisions of the board upon matters properly before it an appeal may be taken to the district court by any person aggrieved, upon filing an undertaking in such sum and with such sureties as may be approved by the county auditor, conditioned that the appellant will prosecute such appeal without delay and pay all costs adjudged against him in the district court. Such undertaking shall be executed to the county and may be sued on in the name of the county. The 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 to the district court when the interests of the county are affected, which appeal shall be taken in the name of the county, and in such case no bond shall be required. Upon serving the notice provided for in the next section the county auditor shall proceed the same as if an undertaking had been filed and his fees for making the transcript shall be paid as other claims by the county.

§ 46, c. 21, Pol.C.
§ 1, c. 5, 1883.
am'd.

§ 47, c. 21, Pol.C.

§ 1928. Appeal, how taken. Such appeal must be taken within thirty days after the decision of the board by serving a written notice of appeal upon one of the members of the board; and the county auditor shall upon the filing of the undertaking and the payment of his fees as hereinafter provided make out a complete transcript of the proceedings of such board relating to the matter in controversy and shall deliver the same to the clerk of the district court.

§ 48, c. 21, Pol.C.

§ 1929. Appeals to be filed, when. Such appeal shall be filed on or before the first day of the next term of the district court after such appeal is taken and the cause shall stand for trial at such term.

§ 49, c. 21, Pol.C.

§ 1930. Appeals docketed and tried de novo. All appeals thus taken shall be docketed as other causes pending in the district court and the same shall be heard and determined de novo.

§ 50, c. 21, Pol.C.

§ 1931. Power of district court. The district court may enter 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 such board to comply therewith by mandamus, or by attachment for contempt.

§ 51, c. 21, Pol.C.

§ 1932. Officers to make settlement. 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, taking duplicate receipts therefor and deposit one of the same with the county auditor within five days thereafter.

§ 10, c. 49, 1879.

§ 1933. Board to ascertain amount of redemption money. It is the duty of the board at each annual meeting to examine the county treasurer's tax sale book and stub receipts and ascertain the amount of redemption money in the treasury and require such treasurer to account for the same.

§ 52, c. 21, Pol.C.

§ 1934. Penalty for failure to render or settle accounts. If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the board of county commissioners shall adjust the accounts of such delinquent according to the best information it 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.

§ 53, c. 21, Pol.C.
§ 1, c. 139, 1881.

§ 1935. Warrants draw interest, when. All county warrants hereafter drawn by the proper authorities shall, after having been presented to the county treasurer for payment and by him indorsed "not paid for want of funds," from such date draw interest at the rate of seven per cent per annum.

§ 54, c. 21, Pol.C.
§ 2, c. 51, 1887.
am'd.

§ 1936. Proceedings of board to be published. It shall be the duty of the board to cause to be published in three newspapers published in its county, or in case there are not three newspapers within the county qualified to make such publication, then in as many as there are, a full and complete report of all its official proceedings at each regular and special meeting, such proceedings to be published as soon after each meeting as practicable, and the board shall pay at the rate of twenty-five cents per square of twelve lines of solid brevier type or its equivalent to each newspaper designated to publish such proceedings, which shall file or cause to be filed with the county auditor an affidavit of publication executed in proper form;

provided, that not more than two newspapers in any congressional township shall be so designated and, when there are but two papers in the county and both are in the same congressional township, the commissioners shall designate but one of such papers. In case there is no newspaper published in the county the board shall cause such proceedings to be published in such newspaper in the state as has the largest circulation in such county and shall also cause such report to be posted in three public places in the county, one of which places shall be the office of the county auditor.

§ 1937. **Auditor to furnish copy of proceedings.** The county auditor shall make out a full and complete report of the proceedings of each regular and special meeting of the board and transmit the same to the publishers of the newspapers selected by such board to publish such proceedings, such report to be made out and transmitted within one week from the time such proceedings are had. § 55, c. 21, Pol.C. am'd.

§ 1938. **Proceedings to be published, when.** It shall be the duty of the publisher of each newspaper selected to publish the proceedings of the board to cause such proceedings to be published in the issue of his paper next succeeding the time of their reception. § 56, c. 21, Pol.C. am'd.

ARTICLE 8. — DEPOSITORIES OF COUNTY FUNDS.

§ 1939. **Commissioners to designate depositories.** The board of county commissioners of each county in this state at its first regular meeting after the adoption of this code and thereafter at its first regular meeting in January of each odd numbered year shall designate one or more national or state banks in its county as county depositories, in which all the funds of such county shall be deposited. § 2, c. 49, 1893. am'd.

§ 1940. **Proposals, advertisement for.** The county auditor of each county shall advertise in one or more newspapers of the county for at least two weeks immediately prior to such meeting for sealed proposals for the deposit of the funds of such county, which advertisement shall state the date up to which such proposals will be received, which date shall be the first day of the meeting of the board at which such proposals are to be opened. Such proposals shall state in writing what rate of interest will be paid on the average daily balances during the month, interest to be paid monthly, on condition that such funds with accrued interest shall be held subject to draft at all times on demand. Such proposals shall be inclosed in sealed envelopes addressed to the county auditor and marked "proposals for deposit of county funds" and shall be by the county auditor filed in his office. § 3, c. 49, 1893. am'd.

§ 1941. **Proposals, acceptance of. Bonds.** Such proposals shall be presented to the board at such meeting and then, and not until then, opened by the county auditor in the presence of the board, and the board shall thereupon proceed to accept the proposal of the bank or banks offering the highest rate of interest not inconsistent herewith, subject to the filing of a satisfactory bond as hereinafter provided, the amount of which bond shall then and there be fixed by the board. Before any bank shall be designated as such depository it shall submit to the board for its approval a bond payable to the county, conditioned for the safe-keeping and repayment of any funds deposited in such bank, which bond shall be signed by not less than five freeholders of the county as sureties, such bond to be in the sum required by the board, but in no case less than double the probable amount of funds to be deposited in such bank. If at any time the amount of funds on deposit in any of such depositories shall exceed § 4, c. 49, 1893. am'd.

one-half the amount named in such bond, it shall be the duty of the board at its next regular meeting thereafter to require from such depository an additional bond in a sum not less than twice the amount of such excess. Such bond shall be approved by the board and the approval thereof indorsed thereon by the chairman of the board and by him deposited with the county auditor, and any bank whose bond shall have been so approved shall thereupon be designated by the board as a county depository and shall continue as such until such time as the board shall readvertise for bids as aforesaid. If the board fails or refuses to approve any such bond the same may be presented to the judge of the district court, upon three days' notice to the county auditor, who shall proceed to hear and determine the sufficiency of such bond and may approve or disapprove the same as the facts warrant. If he approves such bond said bank shall be declared a public depository as aforesaid. The sureties on such bond shall be required to justify as required by law in arrest and bail proceedings.

§ 5. c. 49, 1893.

§ 1942. Equal bidders. Depository, how determined.

When two or more banks in the same county proposing to become depositories offer the same rate of interest it shall be the duty of the board to select impartially as many of such banks as depositories as offer ample security for such deposit, requiring from each of such banks bonds of equal amount. In estimating the value of the security offered by any proposed depository the capital, surplus and general credit of the bank shall be taken into consideration, as well as the bonds proposed to be given.

§ 6. c. 49, 1893.

§ 1943. Two or more depositories. Duty of treasurer.

In case two or more banks are designated as depositories the county treasurer shall as far as practicable, keep in each of the several depositories equal balances at all times; provided, that in counties where two or more banks are designated as depositories the amount deposited in any bank shall not exceed the assessed capital of such bank.

§ 7. c. 49, 1893.

§ 1944. Duty of board in designating depositories.

Further to secure the safety of the county funds deposited under the provisions of this article, the board of county commissioners shall satisfy itself of the responsibility of the several banks proposing to act as depositories, and no bank offering more than three per cent per annum on deposits subject to check shall be designated as a depository under the provisions of this article.

§ 1. c. 49, 1893.

§ 1945. Treasurer to deposit funds. All funds of the county shall be deposited in the name of the county by the county treasurer as soon as received by him in such bank or banks as shall have been designated as county depositories.

§ 9. c. 49, 1893.

§ 1946. Penalty for violation. If any county treasurer shall deposit any of the funds of his county or loan the same in any manner except in accordance with the provisions of this article he shall be liable to a penalty of five hundred dollars for each deposit or loan so made.

§ 8. c. 49, 1893.

§ 1947. Monthly statement by depository. Each depository shall furnish to the county auditor on the first day of each month an itemized statement of the county's account with such depository, duly verified by the affidavit of the cashier of such bank, which statement shall be filed and carefully preserved in the office of the county auditor. All sums of interest accruing on the funds deposited as aforesaid shall be credited to such deposit account on the

first day of each month for the preceding month and a statement of such interest shall be rendered by such depository to the county auditor on the first day of each month and the auditor shall charge the treasurer with the amount thereof and credit the same to the general fund of the county.

§ 1948. **Checks, how signed.** All checks drawn upon the county depositories shall be signed by the county treasurer in the name of the county by himself as treasurer. § 10, c. 49, 1893.

§ 1949. **Duty of board in county where only one bank is located.** It is the duty of the officers mentioned in this article to comply with the provisions hereof; provided, that in counties where only one bank is located the board of county commissioners shall designate such bank a depository without advertising for bids if such bank agrees to pay interest at the rate of at least three per cent per annum and complies with the provisions of the foregoing sections. In counties where there is no bank located or where no bank offers to comply with the requirements of this article the board must designate some bank or banks outside of such county as depositories, but such bank or banks must furnish bonds according to the provisions hereof. § 11, c. 49, 1893, am'd.

§ 1950. **Treasurer exempt from liability, when.** When the funds of any county are deposited by the county treasurer as provided herein, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any such bank to the extent only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy. § 12, c. 49, 1893.

§ 1951. **Violation of this article a misdemeanor.** Any officer violating any of the provisions of this article shall be deemed guilty of a misdemeanor. § 13, c. 49, 1893, am'd.

ARTICLE 9.—REGISTER OF DEEDS.

§ 1952. **Record of instruments.** 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, if the person so filing them for record shall first pay him the fees provided by law for filing or 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 the letter or number 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 recorded by him he shall write the date, the hour and minute of the day when it was filed with him and the page on which it is recorded. § 57, c. 21, Pol.C. am'd.

§ 1953. **Seal of register of deeds.** He shall provide himself with a seal and make an impression of the same upon each instrument to which he attaches his official signature. Such seal shall bear the following inscription: "Register of deeds of County." § 1, c. 95, 1883, am'd.

§ 1954. **Numerical index required.** He shall prepare from the records of his office and thereafter keep a numerical index of the deeds, mortgages and other instruments of record in his office affecting or relating to the title to real property. § 58, c. 21, Pol.C.

§ 1955. **Separate indexes to be kept.** 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 § 59, c. 21, Pol.C.

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.
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FORM OF SECTIONAL SYSTEM OF NUMERICAL INDEX TO REAL ESTATE.

TOWNSHIP NO RANGE NO SECTION NO

No. of Section.	Quarter Sec.	Part Qr. Sec.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1	N. E. }	N. E. quarter														
		N. W. quarter														
		S. W. quarter														
		S. E. quarter														
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§ 1956. Grantor and grantee indexes required. He shall § 1, c. 134, 1887.
prepare from the records of his office and keep grantor and grantee indexes of the deeds, mortgages and other instruments of record in his office, affecting or relating to the title of real property, in addition to the numerical indexes above provided for.

§ 1957. Separate indexes of deeds and liens. He shall pre- § 2, c. 134, 1887.
pare and keep 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 name of the grantor and grantee, dates of instruments, dates of filing and description of property affected.

§ 1958. Document number. Priority of filing. It shall be the duty of each register of deeds in this state when any deed, patent, mortgage, receiver's receipt, contract, notice of lis pendens, copy of decree or other instrument affecting the title to, or creating a lien upon any real estate within his county, is filed in his office, immediately to write or stamp thereon a document number, which numbers shall be consecutive in the order of filing commencing with number one in each county, and following in the order of filing of the various documents; and priority of number shall be prima facie evidence of priority of filing; provided, that when such register of deeds shall receive by mail or other like inclosure more than one instrument at a time he shall affix such numbers in the consecutive order in which such instruments actually come to his hand on opening such inclosure save that when more than one instrument is received from the same source at the same time he may follow such directions if any, as the sender may give in such numbering.

§ 1959. Reception book to be kept. There shall be provided by the county commissioners of each county in the state in the same manner that other record books are provided a book for use in the office of the register of deeds to be known as the reception book, in which shall be entered, immediately after numbering, all documents and papers enumerated in the last section and such book shall be ruled in parallel columns showing, in the first column at the left hand side of the page, the document number; in the second column, the date of filing; in the third column, the grantor; in the fourth column, the grantee; in the fifth column, the character of the instrument; in the sixth, the book and page where recorded; in the seventh, to whom delivered; and in the last column at the right, a brief description of the property, if any, described therein, and such book shall be a part of the public records of the office and open to public inspection during office hours.

§ 1960. Duty of register of deeds. When such instruments are numbered and entered in the reception book and indexed, they shall be recorded or filed as now provided by law and it shall be the duty of the register of deeds to write or stamp, or cause to have written or stamped at the beginning of the record thereof, if recorded, the words "document number" and add thereto the number stamped or written on such document and to add, immediately after the record of such instrument, a certificate setting forth that the same was filed in his office, giving date and hour as now provided by law, which certificate he shall authenticate with his official signature, but to which he need not affix his official seal.

§ 1961. Record, when complete. Penalty for alteration. The affixing of the signature of the register of deeds to such record shall be deemed to have completed the record thereof, and any person who shall thereafter willfully erase, add to, interline, mutilate, conceal, destroy or in any manner change such record shall be deemed guilty of a violation of section 6959 of the penal code of this state and on conviction thereof be punished as therein provided.

§ 1962. Chattel mortgages excluded. The last four sections shall not be construed to extend to or cover the filing and indexing of chattel mortgages as now provided by law.

ARTICLE 10. — COUNTY TREASURER.

§ 93, c.21, Pol.C.
am'd.

§ 1963. Duties of. 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 out by him only on the warrant of the board of county commissioners drawn according to law, except as otherwise specially provided, and all other moneys shall be paid over by him as provided by law.

§ 94, c.21, Pol.C.
am'd.

§ 1964. Method and publicity of accounts. He shall be the collector of taxes and 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; 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 and accounts, and he shall at all times exhibit such accounts, when desired, to the state, county or school officers entitled to examine the same, and shall at any time pay over the balance in his hands to the proper officer, upon receiving proper vouchers.

§ 95, c.21, Pol.C.

§ 1965. Board examines and settles 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 it may direct, he shall settle with the board his accounts as treasurer, and for that purpose shall exhibit to it all his books, accounts and moneys and all vouchers relating to the same to be audited and allowed, which vouchers shall be retained by the board as evidence of such settlement; and if found correct the account shall be so certified; if not, he shall be liable on his bond.

§ 96, c.21, Pol.C.
am'd.

§ 1966. To insure county property. When directed by the board, he shall cause to be insured at the expense of the county any or all of the public buildings of the county and other property belonging to the same, in the name of the county or otherwise as the board may direct; and in case of the destruction or damage to the buildings or the 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.

§ 1967. To certify abstracts. Fees. It shall be his duty to attach his certificate to each abstract of title to real estate of his county that may be presented to him for that purpose, which certificate shall show the amount of taxes due and unpaid against, or tax title affecting the land described in such abstract, as the same appears from the records in his office; and as 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 article, he shall be liable to a fine of not exceeding one hundred dollars. § 1. c. 1, 1887.

§ 1968. Report to township clerks, when. The county treasurer of each county shall, between the fifth and twentieth days of February of each year, notify by mail the township clerk of each organized township in his county of the amount of money on hand in the county treasury belonging to the township on the fifth of February, the amount belonging to each fund being stated separately. He shall also between the fifteenth day of November and the first day of December of each year, mail a like notice to each township clerk stating the amount of money in the county treasury belonging to the township on the fifteenth day of November, the amount in each fund being stated separately. § 1. c. 47, 1895.

§ 1969. Statement of amount paid. Whenever the county treasurer pays or remits any township funds to a township treasurer he shall on the same day mail to the township clerk of such township a statement of the amount so paid or remitted, stating the amount belonging to each fund separately. § 2. c. 47, 1895.

§ 1970. Township clerk to keep record. The township clerk shall make a record of the statements thus received from the county treasurer, and shall keep an account of the township funds in the same manner as is required of the township treasurer; and at the annual township meeting in March of each year the books of each officer shall be examined, compared and balanced. § 3. c. 47, 1895.

ARTICLE 11.—COUNTY AUDITOR.

§ 1971. Clerk of board of county commissioners. The county auditor shall by virtue of his office be clerk of the board of county commissioners of his county and he shall keep an accurate record of its official proceedings and carefully preserve all 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, and carefully do and perform all other acts and duties required by law. § 4. c. 10, 1887.

§ 1972. To keep account current with treasurer. He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with him any receipt given by the treasurer for money paid into the treasury, he shall file such receipt in his office and charge the treasurer with the amount thereof. § 5. c. 10, 1887.

§ 1973. To 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 his death his personal representatives shall in like manner deliver the same to his successor as aforesaid.

§ 7. c. 10, 1887.
am'd.

§ 1974. To draw all county warrants. He shall draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the board of county commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal. All warrants must distinctly specify the liability for which they are drawn and when it accrued.

§ 7. c. 10, 1887.
am'd.

§ 1975. Warrants consecutively numbered and registered. All warrants issued by the county auditor during each year, commencing with the first Monday in January, must be numbered consecutively and the number, date and amount of each and the name of the person to whom payable and the purpose for which drawn, must be stated therein and they must at the time they are issued be registered by him in a book kept for that purpose.

§ 63. c. 21, Pol.C.

§ 1976. 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 of which, certified under the hand and seal of the auditor, shall be admitted as evidence in all courts in this state.

§ 1. c. 73, 1881.
am'd.

§ 1977. Election duties. He shall perform all the duties required of him by law relative to the making out and delivering notices of general and special elections, making abstracts of and canvassing the votes cast at any such election, issuing certificates of election and forwarding the abstracts of votes cast at such elections to the secretary of state; and whenever the county commissioners for any cause shall fail or refuse to call special elections, the county auditor shall have authority to provide for and call any such election upon the petition of a majority of the legal voters of the county, to be determined by the poll lists of the last preceding general election.

§ 11. c. 10, 1887.

§ 1978. Liability of auditor. If any county auditor fails to make settlement or pay over any 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 an action against him and his sureties in the district court of such county, and he shall be proceeded against as provided by law in other cases. 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 such suspension and the reasonable expenses of his defense upon such hearing shall be paid by the county. If upon the trial of such action such auditor is adjudged guilty of any neglect of duty, his office shall be deemed vacant.

ARTICLE 12.—STATE'S ATTORNEYS.

§ 1979. Duties of. The state's attorney is the public prosecutor, and must:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed; and for that purpose, when not engaged in criminal proceedings in the district court must attend upon the magistrates in cases of arrest when required by them, except in cases of assault and battery and petit larceny and attend before and give advice to the grand jury whenever cases are presented to them for their consideration.

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all bonds forfeited in the courts of record and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or his county.

4. Deliver receipts for money or property received in his official capacity, and file duplicate receipts thereof with the county auditor.

5. On the first Mondays of January, April, July and October in each year file with the county auditor an account, verified by his oath, of all money received by him in his official capacity during the preceding three months and at the same time pay it over to the county treasurer.

6. Give when required, and without fee, his opinion in writing to the county, district, township and school district officers, on matters relating to the duties of their respective offices.

7. Keep a register of all official business, in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.

§ 1980. Adviser of county board. Must oppose illegal claims. He is the legal adviser of the board of county commissioners. He must attend their meetings when required, and must oppose all claims and accounts presented against the county which are unjust or illegal.

§ 1981. To institute actions to recover moneys illegally paid. If the board of county commissioners without authority of law orders any money paid as a salary, fees or for any other purpose, and such money has been actually paid, or if any other county officer has drawn any warrant in his own favor or in favor of any other person, without being authorized by the board of county commissioners or by law, and the same has been paid, the state's attorney is empowered, and it is his duty to institute an action in the name of the county against such person to recover the money so paid, and no order of the board of county commissioners therefor is necessary to maintain such action; but when the money has not been paid on such order or warrants, it is the duty of the state's attorney upon receiving notice thereof, to commence an action in the name of the county to restrain the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

§ 1982. Not to present or advocate claims against county. The state's attorney, except for his own services, must not present any claim, account or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

§ 1983. Not to accept fee or reward. Traveling expenses. He shall not receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business

§ 6, c. 43, 1883.
am'd.

to which it shall be his official duty to attend, nor be concerned as attorney or counselor for either party, other than for the state or county, in any civil action depending on a state of facts upon which any criminal prosecution then pending shall depend; nor shall any state's attorney be eligible to or hold any judicial office whatever. When required to go to any other county or from one part to another part of his county to transact any official business as such state's attorney, he shall be entitled to receive from his county the amount of his actual and necessary expenses in transacting such business, in addition to the salary fixed by law, which expenses shall be audited and paid by the board of county commissioners as other county expenses are audited and paid.

§ 8, c. 43, 1883.

§ 1984. To receipt for public moneys. It shall be his duty, whenever he shall receive any moneys from fines, bonds, penalties or costs, to deliver to the officer or person paying the same duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer.

§ 10, c. 43, 1883.
am'd.

§ 1985. Penalty for failure to pay over moneys. Whenever such state's attorney shall refuse or neglect to account for or pay over the moneys so received by him as required by law, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars, and it shall be the duty of the county treasurer 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.

§ 7, c. 43, 1883.
1, c. 59, 1889.
am'd.

§ 1986. Court may appoint state's attorney, when and how. The district court whenever there shall be no state's attorney for the county or when the state's attorney is absent or unable to attend to his duties may, when 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 district court shall by order, to be entered in the minutes of the court, fix his fee therefor which amount shall be allowed by the board of county commissioners, and which amount shall be deducted from the salary of the state's attorney. Nothing in this section shall be so construed as to give the court the power permanently to fill vacancies in such office, but such power is vested in the board of county commissioners as elsewhere provided in this code.

§ 1987. State's attorney may appoint assistant. The state's attorney is authorized and empowered to appoint an assistant state's attorney within his county and shall be responsible under his official bond for the acts of such assistant.

§ 1988. Judge may appoint special counsel. Compensation. The judge of the district court may in his discretion appoint special counsel to assist the state's attorney in important cases. Such special counsel shall be paid a reasonable fee therefor to be approved by the court and paid by the county for which the services were rendered.

ARTICLE 13. — CLERK OF DISTRICT COURT.

§ 1989. Duties of. The clerk of the district court shall perform the following duties:

1. Take charge of and safely keep and dispose of according to law

all books, papers and records which may be filed or deposited in his office.

2. Act as clerk of the district court and attend each session thereof and upon the judge at chambers when required.

3. Issue all process and notices required to be issued; enter all orders and judgments proper to be entered; keep in his office a register of all actions, which must state the names of the attorneys and all fees charged therein and such other matters as are required by law.

4. Keep for the district court in separate volumes an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads alphabetically arranged as follows: "Number of action," "plaintiffs," "defendants," "date of judgment," "number of judgment," "page of entry of judgment in judgment book," "page of minute book of district court;" also an index labeled "General Index—Defendants," each page of which must be divided into seven columns as above provided.

5. Keep a minute book, which must contain the daily proceedings of the court, which may be signed by the clerk, which book must be indexed in the names of both plaintiff and defendant.

6. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "Declaration of Intention to Become Citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "Naturalization, Final Papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission and the page of the minute book or book of record containing the order admitting him a citizen.

7. Keep a book called "Register of Criminal Actions," in which must be entered the title and number of the action, with a memorandum of each paper filed, order or proceeding had therein, with the date thereof, and the name of each witness, number of days in attendance and his legal fees, with a proper index to the same.

8. Keep a book called "Book of Jurors' Certificates," in which must be contained the blank certificates and stubs to be filled, as provided in this code.

9. Keep a "Witness Book," in which must be contained blank certificates and stubs to be filled as provided in this code.

10. Keep a record of the attendance of all jurors, and of witnesses in criminal actions and compute the mileage of each.

11. Keep such other records and perform such other duties as are prescribed by law.

§ 1990. Penalty for neglect of duty. Any person who may at any time be injured or aggrieved by reason of the violation of the duties of his office upon the part of any such clerk, or by any willful neglect or refusal to perform any of the duties of his office, may institute legal proceedings upon the bond of such clerk and collect therein double the amount of damages actually sustained by such aggrieved person; and the county treasurer is also authorized and required for every such violation and neglect of duty to collect a fine of not less

§2. c. 14, Pol. C.
am'd.

§ 5, c. 14, Pol. C.

than fifty dollars for every such violation of duty, or refusal or neglect on the part of such clerk.

§ 1991. Clerk may adjourn court, when. Whenever the judge, whose duty it may be to preside at any term of the district court, 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, such clerk is authorized, and it shall be his duty to adjourn such court from day to day, until the fourth day of the term, and if such judge does not appear and take his seat to preside therein on the fourth day of such term, and the clerk does not at or before such fourth day receive a written order of adjournment, he shall adjourn such court without day; but the judge may by written order to the clerk made at any place in the state adjourn such court to such other time as he may appoint, and such adjourned term shall be considered as a regular term for all purposes.

ARTICLE 14. — SHERIFF.

§ 1992. Duties of. It is the duty of the sheriff:

1. To preserve the peace.
2. To arrest and take before the nearest magistrate, or the magistrate who issues the warrant, all persons who attempt to commit or have committed a public offense.
3. To prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.
4. To attend each term of the district court held within his county and obey its lawful orders and directions.
5. To command the aid of as many male inhabitants of his county as he may think necessary in the execution of his duties.
6. To take charge of and keep the county jail and the prisoners therein.
7. To indorse upon all notices and process received by him for service, the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of his fees, a certificate showing the names of the parties, title of paper and time of reception.
8. To serve all process or notices in the manner prescribed by law.
9. To certify under his hand upon process or notices the time and manner of service, or, if he fails to make service, the reasons of his failure and return the same without delay.

§ 1993. Foreign process, how returnable. When process or notices are returnable to another county, the sheriff may inclose such process or notices, in an envelope, addressed to the officer or person sending them, and deposit it in the post office, prepaying postage.

§ 1994. Return prima facie evidence. The return of the sheriff upon process or notices is prima facie evidence of the facts stated in such return.

§ 1995. Liability for failure to return. If the sheriff does not return a notice or process with the necessary indorsement thereon without delay, he is liable to the party aggrieved for all damages sustained by him.

§ 1996. Liability for failure to execute process. If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses after being required by the creditor or his attor-

ney to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

§ 1997. **Liability for failure to pay over money.** If he neglects or refuses to pay over on demand to the person entitled thereto any money which may come into his hands by virtue of his office, after deducting his legal fees, the amount thereof with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand may be recovered by such person.

§ 1998. **Liability for an escape.** A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail.

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment.

3. When the arrest is on an execution or commitment, other than to enforce the payment of money, he is liable for the actual damages sustained.

Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation or exculpation.

§ 1999. **Liability for a rescue.** He is liable for a rescue of a person arrested in a civil action equally as for an escape.

§ 2000. **Action, when cannot be maintained against.** An action cannot be maintained against the sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff.

§ 2001. **Office, when vacant.** When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office and remains committed for sixty days, his office shall become vacant.

§ 2002. **To execute all process.** A sheriff or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceeding upon which they were issued.

§ 2003. **To exhibit process.** The officer executing such process must at all times, so long as he retains it, upon request, show the same with all papers attached to any person interested therein.

§ 2004. **To open and adjourn court.** The sheriff in attendance upon court must act as the crier thereof and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

§ 2005. **Service of papers on sheriff, how made.** Service of a paper, other than a process, may be made upon the sheriff by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or, if no such person is there, by leaving it in a conspicuous place in the office.

§ 2006. **Coroner to execute process, when.** When the sheriff is a party to an action or proceeding the process and orders

therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

§ 2007. To perform all lawful duties. The sheriff must perform such other duties as are required of him by law.

ARTICLE 15. — CORONER.

§ 67, c.21, Pol.C.

§ 2008. Coroner to act as 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 is 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 if required, 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 service.

§ 68, c.21, Pol.C.
§ 1, c. 55, 1881.
am'd.

§ 2009. To hold inquests. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, except as otherwise specially provided. 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 the time and place named in the warrant, or when the services of such sheriff or constable cannot conveniently be procured, then the coroner may summon such electors from the bystanders.

§ 69, c.21, Pol.C.

§ 2010. Warrant, form of. The warrant may be in substance as follows:

State of North Dakota, }
County of..... } ss.

To the sheriff or any constable of said county:

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..

Coroner.

§ 70, c.21, Pol.C.

§ 2011. Completing jury and oath. If any juror fails to appear the coroner shall cause the proper number to be summoned from the bystanders and immediately proceed to empanel 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.

§ 71, c.21, Pol.C.

§ 2012. Subpoenas for 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 the attendance of wit-

nesses 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.

§ 2013. **Oath to witnesses.** An oath shall be administered to the witnesses, in substance as follows: § 72, c.21, Pol.C.

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.

§ 2014. **Return by jury. Form.** 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: § 74, c.21, Pol.C.

State of North Dakota, }
County of..... } ss.

An inquisition held at.....in.....county, state aforesaid, on the.....day of..... A. D. 18..., before, coroner of such 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 (here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously).

In testimony whereof, said jurors have hereunto set their hands the day and year aforesaid.

Such inquisition shall be attested by the coroner.

§ 2015. **Not to disclose name of accused.** If at such inquisition it is found that a crime has been committed on the deceased, the name of the person whom the jury believe has committed it shall not be made public until after the arrest directed in the next section. § 75, c.21, Pol.C. am'd.

§ 2016. **May order arrest.** If the person charged is 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 is 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. §§ 76, 77, c. 21, Pol. C.

§ 2017. **Warrant returnable to a justice of the peace.** The warrant of the coroner in such 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 a complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases. § 78, c.21, Pol.C.

§ 2018. **Warrant to recite verdict.** The warrant of the coroner shall recite substantially the transactions before him and the verdict of the jury leading to the arrest, and such warrant shall be sufficient foundation for the proceedings of the justice. § 79, c.21, Pol.C.

§ 2019. **Testimony reduced to writing.** The testimony of all witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction, and be subscribed by the witnesses respectively, and the coroner shall forthwith file such testimony together with a record of all proceedings had before him, in the office of the clerk of the district court of the county wherein § 1, c. 37, 1895.

such inquest is held. In all cases brought to the attention of the coroner wherein he does not deem it necessary to hold an inquest he shall file with such clerk a certificate setting forth the facts in relation thereto. The clerk of said court shall forthwith duly file, index and enter such case or proceeding in a book or books to be kept for that purpose, in the same manner as proceedings in civil actions are now entered, and shall receive from the treasury of said county the same fees as are now allowed by law for like services, and he shall index and enter in the manner above described all the proceedings of the coroner that have heretofore at any time been filed in his office.

§ 81, c.21, Pol.C.
am'd.

§ 2020. Disposition of body. Payment of expenses. The coroner shall cause the body of each deceased person, which he is called to view, to be delivered to his friends, if any, but if there are no friends, he shall cause such body to be decently buried, and the expenses thereof shall be paid from the county treasury and the county shall be reimbursed therefor out of any property found with his body. The coroner shall certify an account of such expenses to the county auditor and the board of county commissioners shall allow the same if deemed reasonable and direct a warrant to issue therefor.

§ 82, c.21, Pol.C.

§ 2021. Justice may act as coroner, when. When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the 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 him by his warrant, and may proceed with him as a justice of the peace.

§ 83, c.21, Pol.C.

§ 2022. Physicians summoned as experts, when. 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.

§ 84, c.21, Pol.C.

§ 2023. Disposition of property found 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 fails to do so the treasurer may proceed against him for its recovery by a civil action in the name of the county.

§ 85, c.21, Pol.C.

§ 2024. Treasurer's duty with money and property. Upon the delivery of money to the treasurer he must place it to the credit of the county. If it is 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.

§ 86, c.21, Pol.C.

§ 2025. Money, when and how paid. If the money in the treasury is 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.

§ 87, c.21, Pol.C.

§ 2026. Statement by coroner. Before auditing and allowing the account of the coroner, the board of county commissioners must require him to render 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.

§ 2027. **To perform all lawful duties.** The coroner must perform such other duties as may be prescribed by law.

ARTICLE 16. — COUNTY SURVEYOR.

§ 2028. **Duties of.** 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 county courts, the board of county commissioners or the board of township supervisors 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. § 97, c.21, Pol.C. am'd.

§ 2029. **Record of field 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 auditor and said record shall be competent evidence in all courts of the facts therein set forth. § 98, c.21, Pol.C.

§ 2030. **Resurvey and subdivision, how made.** The resurvey and subdivision of lands by all surveyors shall in all respects be according to the laws of the United States and the instructions issued by the officers thereof in charge of the public land surveys 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. § 99, c.21, Pol.C.

§ 2031. **Sworn chainmen in disputed cases.** Whenever the survey is of lines and monuments in dispute between parties, or is made by order of the district or county court, 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. § 100, c.21, Pol.C.

§ 2032. **Fullness and accuracy of field 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. § 101, c.21, Pol.C.

§ 2033. **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 evidence 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. § 102, c.21, Pol.C.

§ 2034. **Assistants, how paid.** 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. § 103, c.21, Pol.C.

ARTICLE 17. — COUNTY BONDS.

§ 1, c. 30, 1890.
am'd.

§ 2035. Bonds, how issued. Disputed claims. Each organized county in this state is 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 interests of the county, to issue its negotiable bonds in the name of said county for the sole purpose of funding or refunding the outstanding indebtedness of such county, represented by the county warrants, bonds or orders of such county; or for the purpose of funding and paying claims against such county which have heretofore been disputed, but which may have been or may hereafter be adjusted and allowed by such board; or for the purpose of paying any final judgment which may have been rendered against such county; provided, that the board in making settlement of disputed claims shall not allow interest at a greater rate than seven per cent per annum; provided, however, that no county shall in any event issue its bonds in any amount which, with its prior bonded indebtedness, will exceed the maximum indebtedness allowed by law; but the issuing of new bonds in lieu of outstanding bonds or indebtedness shall not be considered as the creation of a new debt.

§ 2, c. 30, 1890.

§ 2036. Appeal in disputed claims. Whenever any disputed or litigated claim shall have been adjusted and determined by the board, an appeal may be taken from said settlement in the manner and within the time now allowed by law to the district court in and for said county; and no bonds shall be issued as hereinafter provided until the expiration of the period allowed by law within which said appeal may be taken.

§ 3, c. 30, 1890.
am'd.

§ 2037. Bonds. Rate of Interest. Mode of issue. Said bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars, shall bear the date of their issue, and shall be made payable to the order of the purchaser in not less than five nor more than twenty years from their date, and bear interest not to exceed six per cent per annum, payable semiannually, with coupons attached for each interest installment; said bonds and coupons 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. Such bonds shall be printed, lithographed or engraved on bond paper, and each bond shall state on its face that it is issued in accordance with the provisions of this article, and that portion of this article relating to the issuance of funding and refunding bonds shall be printed on the back of each bond. Such bonds may be made payable anywhere in the United States.

§ 4, c. 30, 1890.

§ 2038. Bonds may be exchanged or sold. Said bonds may be exchanged at par value for an equal amount of indebtedness of said county with the holder of such indebtedness, whether evidenced by county warrants, bonds or orders, judgment or adjusted claim; or said bonds may be sold by the board at not less than par value, and the proceeds applied solely to the payment of the indebtedness for which they were issued. A record of each bond so issued shall be kept by the county treasurer showing the number of each bond so issued, its date, amount, rate of interest, when and where payable, the amount received therefor, to whom sold, and how the proceeds were disposed of, and it shall be the duty of the county auditor to keep a duplicate account of the same.

§ 2039. **Tax to be levied.** 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 a sufficient tax to provide a sinking fund for the payment of the bonds when they mature. § 5. c. 30, 1890.

§ 2040. **County treasurer to pay, when.** When said bonds and the 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 he shall then cancel them by writing or stamping across the face of each coupon or bond the words "paid this day of " (inserting the date of the payment.) § 6. c. 30, 1890.

§ 2041. **Commission allowed treasurer.** The county treasurer shall be allowed a commission of one-fourth of one per cent on the face value of said bonds for receiving and disbursing all funds arising from the sale or exchange thereof and the commission herein provided for shall be in lieu of all other commissions allowed by law and shall be paid into the salary fund and be disposed of as is now provided by law. § 7. c. 30, 1890.

§ 2042. **Bonds negotiable, when.** Bonds issued in substantial conformity with this article shall in law be deemed negotiable. § 8. c. 30, 1890.

BONDS FOR COUNTY BUILDINGS.

§ 2043. **Power to bond.** Whenever any county in this state, having three 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 buildings occupied by such county for courthouse, office or jail purposes are inadequate to the wants thereof, or unsafe by reason of extraordinary risk of fire or otherwise, such county may issue bonds for the purpose of purchasing a site for and erecting a courthouse or jail, or both, under the restrictions and according to the provisions of this subdivision of this article. § 1. c. 42, 1889.
§ 1. c. 43, 1893.

§ 2044. **Limit of issue.** No county shall issue its bonds under the provisions of the last section in excess of five per cent of its valuation according to the last assessment thereof, including all the outstanding indebtedness of such county at the time of issuing such bonds. § 2. c. 42, 1889.
§ 1. c. 31, 1890.

§ 2045. **Election for bonds.** Whenever in the judgment of a majority of the board of county commissioners in any county which comes under the provisions of this subdivision such county has insufficient or inadequate buildings for its use for courthouse or jail, or both, such board may order an election for the purpose of determining by a vote of the electors of such county the question of issuing its bonds for the purpose of the erection of a courthouse or jail, or both, as by this subdivision provided, including the purchase of a site for such courthouse and jail, or both, at such county seat, if none is provided. Such election shall be held in the manner and upon the notice prescribed by law for other elections, but the published and posted notices of such election shall state its object, the amount of bonds to be issued, the denominations of such bonds, the length of time for which they shall run and the rate of interest which they shall bear, and the ballots shall have printed or written, or partly printed and partly written thereon "for issue of bonds" or "against issue of bonds" and if a majority of the ballots so cast shall be for the issue of bonds, then the county commissioners shall issue and dispose of said § 3. c. 42, 1889.

bonds as provided by this subdivision, and erect a courthouse or jail, or both, for the use of such county according to the provisions hereof.

§ 4, c. 42, 1889.
am'd.

§ 2046. Power of county commissioners. Contracts. The board of county commissioners of any county erecting county buildings under the provisions of this subdivision shall have power to purchase ground for a site if necessary, let contracts for the building and completion of such courthouse 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 such buildings shall be let to the lowest responsible bidder, after notice of the letting of such contracts shall have been published in one of the newspapers of such county, and in case there is no newspaper in such county, then in a newspaper in some adjoining county, for at least once a week for four consecutive weeks, before the letting of such contracts, and the board shall have power to reject any or all bids.

§ 5, c. 42, 1889.

§ 2047. Board of auditors. The county auditor, county treasurer and some qualified elector and freeholder of such county appointed by the board of county commissioners outside of its 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 hereof, and the members of such board of auditors shall receive for their services the sum of three dollars each for every day actually and necessarily employed in such capacity, to be paid upon the warrant of such board of county commissioners.

§ 6, c. 42, 1889.

§ 2048. Denominations. Interest. Mode of issue. All bonds issued pursuant to the provisions hereof shall be in denominations of not less than one hundred dollars and not more than one thousand dollars, shall bear the date of their issue, shall be made payable to the purchaser or bearer and become due in not less than ten years nor more than twenty years from their date and shall bear interest at the rate of not exceeding seven per cent per annum, payable annually, 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 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 sections 2043 to 2056 inclusive of the revised codes of 1895, authorizing and empowering organized counties to erect county buildings for courthouse and jail purposes and to issue and dispose of bonds to provide funds to pay therefor, and to provide for the payment of the principal and interest of such bonds." Such bonds shall be printed, engraved or lithographed on bond paper and may be payable anywhere in the United States. They 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 a courthouse or jail or both, and the purchase of a site therefor.

§ 6, c. 42, 1889.

§ 2049. Notice of sale. No such bonds shall be sold until after having been duly advertised at least once a week for four consecutive weeks in one of the newspapers published at the seat of government, and for the same length of time at any other point deemed advisable by the board.

§ 6, c. 42, 1889.

§ 2050. Proceeds. The proceeds of the sale of such bonds shall be deposited in the treasury of such county, to be paid out by

the county treasurer on the order of such board. The county treasurer shall give an additional bond 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 such bonds one per cent of the par value of such bonds, and the compensation herein provided for shall be in lieu of all other commissions allowed him by law.

§ 2051. **Tax to be levied.** The board of county commissioners at or before the issuance of such bonds shall levy upon the taxable property of the county a sufficient tax to pay the interest on such bonds as the same accrues and the principal thereof when due. § 7, c. 42, 1889. am'd.

§ 2052. **Treasurer to pay and cancel at maturity.** When such 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. § 8, c. 42, 1889.

§ 2053. **Bonds to be registered.** 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. § 9, c. 42, 1889.

§ 2054. **Bonds negotiable, when.** Bonds issued in substantial conformity herewith shall be in law considered negotiable. § 10, c. 42, 1889.

§ 2055. **Funding bonds, when issued.** Any county which has issued warrants or other evidences of indebtedness since the first day of January, 1887, for the purpose of building a courthouse or jail, or both, may issue bonds under the provisions of this subdivision to fund such warrants or other evidences 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, that the bonds issued under the provisions of this section shall bear a lower rate of interest than the outstanding indebtedness proposed to be funded. § 11, c. 42, 1889.

§ 2056. **When election not necessary.** Any county which has heretofore and since the first day of January, 1887, submitted to the voters of such county the question of building a courthouse or jail, or both, and issuing bonds therefor and upon such election the building of a courthouse 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 authorized and empowered to issue such bonds, and with the funds so obtained from the sale thereof to construct a courthouse or jail, or both, and are also hereby empowered to purchase a site for such courthouse 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 purchase and conveyance of such site, to be paid for from the proceeds of such bonds when negotiated.

CERTIFICATE OF DEBT LIMIT.

§ 1, c. 33, 1890.

§ 2057. Certificate of debt limit necessary. No bond or evidence of debt of any county, or bond of any township or other political subdivision of this state, shall be valid unless the same has indorsed thereon a certificate stating that such bond or evidence of debt is issued pursuant to law and is within the debt limit, which certificate in the case of a county shall be signed by the county auditor, and in the case of a township or other political subdivision shall be signed by the treasurer of such township or other political subdivision.

CHAPTER 27.

FEES AND SALARIES OF COUNTY, TOWNSHIP AND OTHER OFFICERS.

ARTICLE 1. — STATE'S ATTORNEYS.

§ 2058. Salary of. As compensation for his services there shall be allowed and paid the state's attorney in each county in this state, an annual salary based, in counties having a population of over thirteen thousand, upon the population of such county, exclusive of Indians under the control of the United States or any agent thereof, as follows:

1. The salary of state's attorneys in all counties, having a population of less than thirteen thousand shall remain as now fixed.

2. In counties having over thirteen thousand and not exceeding eighteen thousand inhabitants the salary of the state's attorney shall be the sum of twelve hundred dollars; over eighteen thousand and not exceeding twenty thousand, the sum of fourteen hundred dollars; over twenty thousand, the sum of two thousand dollars; provided, that the compensation of such state's attorney shall not exceed the sum of two thousand dollars per annum in any one county.

§ 2059. Population, how determined. The county auditor shall determine the population of his county for the purposes of the foregoing section by taking the last census, state or federal, and adding thereto five per cent of the population as shown by such census for each year expiring after the year in which such census was taken; provided, however, that not more than twenty per cent shall be added to the census taken as a basis until the next succeeding census.

§ 2060. Office to be furnished. Salary not diminished. The county commissioners in each county, the population of which does not exceed ten thousand, shall provide a suitable and convenient office for the state's attorney or in lieu thereof may allow a reasonable sum not exceeding forty per cent of the salary prescribed by law for the rental and maintenance of such office. The salary of the state's attorney shall not be diminished during the term for which he was elected.

ARTICLE 2. — CLERK OF THE DISTRICT COURT.

§ 2061. **Salary of.** As compensation for his services there shall be allowed and paid to the clerk of the district court in each county, an annual salary based upon the population of his county as follows:

1. For the first three thousand inhabitants or fraction thereof, the sum of four hundred dollars.

2. In counties having more than three thousand inhabitants one hundred dollars for each additional one thousand inhabitants or major fraction thereof, but in no case to exceed two thousand dollars.

§ 2062. **Population, how determined.** The population of each county shall be determined for the purpose of ascertaining the salary of such clerk, in the manner provided in section 2059.

§ 2063. **Deputy clerk, when appointed.** In counties having more than fifteen thousand inhabitants, to be ascertained in the manner provided in section 2059, there shall be a deputy clerk of the district court; and in counties having a less population than fifteen thousand, the board of county commissioners may authorize the appointment of such deputy in its discretion, to serve for such time as the board deems necessary. The deputy shall be appointed by the clerk and shall receive a salary equal to one-half of the salary of the clerk during the time for which he is employed.

§ 2064. **Misdemeanor to receive deputy's salary.** It shall be a misdemeanor for a clerk of the district court to demand or receive any part of the salary of his deputy.

§ 2065. **County, how reimbursed.** For the purpose of reimbursing the county for the salaries of the clerk and his deputy, such clerk shall pay into the county treasury all fees of every description received by him. A violation of the provisions of this section shall constitute embezzlement.

§ 2066. **Fee book to be kept. Report each month.** The clerk shall keep in a book open to public inspection a correct itemized account of all money received by him as fees, and on the first day of each month he shall make a full and correct report to the board of county commissioners of all such money received by him during the previous month and since his last report, which report shall be duly itemized and verified by his oath. He shall pay into the county treasury on the first day of each month all money received as fees during the preceding month, and shall file the treasurer's receipt therefor with his report to the board of county commissioners.

§ 2067. **Fees to be charged.** Clerks of the district court shall charge and collect the following fees:

1. In actions for the recovery of money only, in which judgment is entered by default, for all services prior to execution, two dollars.

2. In all other actions in which judgment is entered by default, for services prior to execution, three dollars and fifty cents.

3. In special proceedings, for all services prior to appeal, four dollars.

4. In actions in which an issue of fact is tried, for all services prior to execution, five dollars.

5. In actions in which only a question of law is tried, the fees shall be the same as on default in like actions.

6. In addition to the foregoing fees, for all services growing out of a provisional remedy, there shall be charged and paid at the time

the remedy is applied for or the first paper in connection therewith filed, two dollars and fifty cents.

7. For issuing execution in any action, one dollar.

8. For filing and indexing a mechanic's lien, one dollar:

9. For filing and indexing any other paper authorized to be filed in his office, but not connected with any civil action or proceeding, twenty-five cents.

10. For making certified abstract of any judgment or certified copy of any judgment, order or other paper filed or recorded in his office, for the first four folios, fifty cents; for each additional folio, ten cents.

11. For entering satisfaction of any judgment or lien, twenty-five cents.

12. For taking declaration of intention to become a citizen of the United States and making a certified copy of the record thereof, one dollar.

13. For final naturalization papers, including copy of the record thereof, one dollar.

14. For each additional copy of either of such citizen's papers, fifty cents.

15. For entering and indexing commission of notary public, fifty cents.

16. For taking an acknowledgment or administering an oath, twenty-five cents.

17. For recording and indexing any paper not filed in an action or proceeding, for the first four folios, fifty cents; for each additional folio, ten cents.

18. For a certificate of the official capacity of a notary public or other officer, fifty cents.

19. For certifying an abstract of real property as to judgments and liens, for each person named in the abstract as to whom search is made, ten cents.

20. For receiving, keeping and paying out money in pursuance of law or an order of court, one per cent of the amount, which shall be paid by the person receiving such money.

21. For issuing commission to take depositions, fifty cents.

22. For certifying the record on appeal to the supreme court, or to the district court of any other county and transmitting the same, one dollar.

23. For all services on remittitur from the supreme court, two dollars.

24. For taking depositions, per folio, ten cents.

ARTICLE 3.—COUNTY JUDGES.

§ 2068. **Salary, how determined.** As compensation for their services, there shall be allowed and paid to the judges of the county courts in all counties an annual salary, based upon the population thereof as follows: For the first three thousand inhabitants or fraction thereof, the sum of three hundred dollars; for the next three thousand inhabitants or fraction thereof, the sum of one hundred dollars additional for each one thousand inhabitants or major fraction thereof; and for each additional one thousand inhabitants or fraction thereof the sum of fifty dollars additional, to be paid by the county treasurer upon the warrant of the county auditor; and in all counties

wherein the county court has both civil and criminal jurisdiction, the county judge as compensation for such additional services, in addition to the salary hereinbefore provided, shall be paid one-half as much more; provided, that the salary of the county judge shall not exceed the sum of two thousand dollars in any county; provided, that the county judges may receive such fees as are allowed by law, in taking acknowledgments of deeds or other instrument and other acts, other than in the settlement of the estates of decedents, of wards, the guardianship of infants and the adjudication of civil and criminal actions; and no causes in probate commenced prior to the eighteenth day of March, 1890, shall be affected hereby.

§ 2069. Provision for clerk hire. The clerk of the county court shall receive no compensation from the county for his services unless such county shall have a population of at least fifteen thousand inhabitants, in which case there shall be allowed and paid to the judge of the county court for clerk hire the sum of six hundred dollars per annum, and in counties having a greater population than fifteen thousand inhabitants, an additional sum of fifty dollars per annum for each additional one thousand inhabitants or fraction thereof, such sum to be paid in the same manner as the salary of the county judge; provided, that in all counties having county courts with civil and criminal jurisdiction with a population of five thousand inhabitants or more, there shall be allowed and paid to the judge of such court as clerk hire, in lieu of that hereinbefore provided for, the sum of four hundred dollars per annum for the first five thousand inhabitants, and the further sum of fifty dollars per annum for each additional one thousand inhabitants, or major fraction thereof, such sum to be paid as above provided.

§ 2, c. 50, 1890.
§ 12, c. 51, 1891.
am'd.

§ 2070. Population, how determined. The county auditor shall determine the population of his county for the purpose of ascertaining the compensation to be paid to the county judge and the amount of such clerk hire, in the manner provided in section 2059.

§ 3, c. 50, 1890.
am'd.

§ 2071. County to be reimbursed, how. For the purpose of reimbursing the county for the salaries provided in the foregoing sections to be paid to the judges of the county courts, each petitioner for letters testamentary, of administration or guardianship, before filing the same in the county court, shall pay or cause to be paid into the county treasury, for the use and benefit of the county in whose county court proceedings are to be instituted to settle the estate of any deceased person, or for the appointment of a guardian, the following sums according to the value of the estate of such deceased person or of such ward, as appears from the sworn statement in the petition of such applicant: Five dollars when the value of the estate does not exceed five hundred dollars; ten dollars when the value of the estate exceeds five hundred dollars, but does not exceed the sum of one thousand five hundred dollars; fifteen dollars when the value of the estate exceeds one thousand five hundred dollars, but does not exceed two thousand five hundred dollars; twenty dollars when the value of such estate exceeds two thousand five hundred dollars, but does not exceed five thousand dollars; twenty-five dollars when the value of such estate exceeds five thousand dollars, but does not exceed ten thousand dollars; thirty dollars when such estate exceeds ten thousand dollars, but does not exceed fifteen thousand dollars; forty dollars when the value of such estate exceeds fifteen thousand dollars, but does not exceed twenty thousand dollars; fifty dollars when the

§ 4, c. 50, 1890.

value thereof exceeds twenty thousand dollars, but does not exceed twenty-five thousand dollars, and seventy-five dollars in all cases where the value of such estate exceeds twenty-five thousand dollars; and in all cases in addition thereto, all sums necessarily expended in publishing or serving notices required by law. In all civil and criminal actions the same fees and costs shall be paid as in like actions in the district court the same to be paid to the judge of the county court, a record to be kept thereof and the same turned over by him to the county treasurer.

§ 5, c. 50, 1890.

§ 2072. Payments to treasurer. Receipts. When the payments provided for in the foregoing sections are made to the treasurer of the proper county he shall execute therefor duplicate receipts, one of which shall be filed with the county auditor and one with the judge of the county court.

ARTICLE 4.—COUNTY AUDITORS.

§ 1, c. 52, 1891.

§ 2073. Salary of, how determined. The salary of the county auditor shall be regulated by the value of the property in his county as fixed by the state board of equalization for the preceding year as follows: He shall be entitled to receive four mills on the dollar on the first one hundred thousand dollars, and one mill on the next three hundred thousand dollars and one-third of one mill on all sums in excess of said sums, not exceeding two million dollars, and one-fifth of one mill on all sums exceeding two million dollars; provided, that no county auditor shall receive for his personal services an amount to exceed two thousand dollars in any one year. But such officer shall not be required to account for fees for certifying to deeds. All fees received by such officer in excess of the above amount shall be paid into the salary fund of the county at the end of each month.

§ 2, c. 52, 1891.

§ 2074. Provision for deputies. If in the judgment of the board of county commissioners of any county it is deemed necessary for the prompt and accurate dispatch of the business in the office of the county auditor, that clerks or deputies be employed therein, they shall authorize the same, and the allowance for such clerk hire shall be paid in the same manner as all other similar claims against the county, but in no case shall the auditor be allowed for clerk hire unless such services have been actually rendered.

ARTICLE 5.—REGISTER OF DEEDS.

§ 3, c. 52, 1891.
am'd.

§ 2075. Salary of, how determined. The register of deeds shall be entitled to receive one thousand dollars in counties where the assessed valuation does not exceed one million five hundred thousand dollars; one thousand two hundred dollars in counties where the assessed valuation exceeds one million five hundred thousand dollars, but does not exceed two million dollars; one thousand four hundred dollars in counties where the assessed valuation exceeds two million dollars, but does not exceed two million five hundred thousand dollars; one thousand six hundred dollars in counties where the assessed valuation exceeds two million five hundred thousand dollars, but does not exceed three million dollars; provided, that no register of deeds shall receive for his personal services an amount to exceed two thousand dollars in any one year.

§ 2076. Fee book to be kept. Monthly reports. Penalty. § 4, c. 52, 1891.

Each register of deeds shall keep a book provided by the county in which shall be entered each item of fees for services 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 a statement under oath showing the fees which he has received as such officer since the date of his last report, and also within 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. Any register of deeds, 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, with intent to evade the provisions of this section, shall be deemed guilty of a misdemeanor.

§ 2077. Deficiency in salary, how provided for. In case the fees paid into the county treasury by the register of deeds shall not equal his salary as fixed herein, then such officer shall only be entitled to receive a sum equal to the fees paid into the treasury; but in case there is a deficiency in the salary of such officer for any month, such deficiency shall be made up from any excess of fees that may be paid into the county treasury by such officer during the calendar year in which such deficiency occurs. § 5, c. 52, 1891. am'd.

§ 2078. Provision for deputies. Salaries. If in the judgment of the board of county commissioners it shall be deemed necessary for the prompt and accurate dispatch of the business in the office of the register of deeds that deputies or clerks be employed therein, it 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 officers in whose office such deputies or clerks are to be employed shall have the sole power of appointing 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 by such officer collected and in no case exceed the sum of five thousand dollars. Any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed to any such clerk or deputy shall be guilty of a misdemeanor. § 6, c. 52, 1891.

§ 2079. Fees to be charged. The register of deeds shall charge and collect the following fees:

1. For recording a deed, mortgage or other instrument, and indexing, for the first four hundred words, seventy-five cents; for each additional folio, ten cents.

2. Copy of record, for each ten words, one cent.

3. Certificate and seal, twenty-five cents.

4. Making certified abstracts of title, for the first deed or transfer, one dollar, and for each additional deed or transfer, ten cents.

5. 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.

6. Entering satisfaction of mortgage or lien, twenty-five cents.

7. For discharging notice of lis pendens, twenty-five cents.

8. For recording marks and brands, each, twenty-five cents.

7, c. 39, Pol. C.
1, c. 1, 1881.
1, c. 76, 1881.
1, c. 63, 1893.
am'd.

9. For filing and indexing a chattel mortgage or for filing and indexing a renewal of a chattel mortgage, twenty-five cents, but no fee shall be charged for releasing the same.

10. For filing and indexing other instruments, not herein specified, authorized by law to be filed, twenty-five cents.

11. For recording a final receipt from the receiver of any United States land office, fifty cents.

ARTICLE 6.—COUNTY TREASURER.

§ 1. c. 53, 1891.

§ 2080. Salary, how determined. The county treasurer of each county shall be allowed at the time of his settlement all sums paid by him for printing such advertisements as he is required to have done, at the rates prescribed by law; and all the sums paid by him for blank books and stationery necessarily used in his office, and shall receive for his services such sums as may be allowed by law for the collection and paying over of all moneys collected or received by him for the leasing, sale or interest on school or other state lands, and on all other public moneys by him collected or received as such county treasurer, for each year's services, as follows: Four and one-half cents on each dollar for the first ten thousand dollars; three cents on each dollar on the next twenty thousand dollars; and two cents on each dollar on all sums over thirty thousand dollars and less than sixty thousand dollars; and one cent on each dollar on all sums over sixty thousand dollars, to be paid on the warrant of the county auditor out of the salary fund, and whenever the salary fund shall be exhausted the auditor shall draw his warrant on the general fund; provided, that no compensation shall be allowed the treasurer from any moneys received from his predecessor in office, or his legal representatives, nor on any moneys received from the current school funds of the state arising from the lease or sale of school lands; provided, that no treasurer shall receive more than twelve hundred dollars for his personal services in any one year in counties where the valuation of taxable property is less than two million dollars; nor more than fifteen hundred dollars in counties where the valuation of taxable property exceeds two million dollars, but does not exceed four million dollars; nor more than two thousand dollars in counties where the valuation of taxable property exceeds four million dollars, but does not exceed six million dollars; nor more than two thousand five hundred dollars in counties where the valuation of taxable property exceeds six million dollars, but does not exceed nine million dollars; nor more than three thousand dollars in counties where the valuation of taxable property exceeds nine million dollars, but does not exceed twelve million dollars; nor more than three thousand five hundred dollars, in counties where the valuation of taxable property exceeds twelve million dollars; and all moneys received as fees for certifying to abstracts, in excess of the amount provided for in this article, shall be paid by the county treasurer at the end of each month into the revenue fund of the county: provided, further, that whenever the salary of the county treasurer is limited to a fixed sum by the second proviso of this section, such sum shall be paid in the manner provided above at the end of each month in twelve equal installments, and no treasurer receiving pay for his services under said second proviso, whose salary cannot be certainly and exactly fixed at the beginning of his official year, shall receive more than one-twelfth of his annual salary at the

end of each month, as carefully estimated and recorded by the board of county commissioners at its January meeting each year; and the balance of the year's pay found to be due the treasurer shall be paid to him on the computation by such board of commissioners at its next January meeting.

§ 2081. Deputies, when appointed. Salaries. 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 county treasurer, that a deputy or clerk be employed therein, it shall by resolution fix the number of deputies or clerks to be employed, and the length of time they shall be employed, together with the compensation which they shall receive, which compensation shall be paid monthly, in the same manner as the salary of the county treasurer; but the officer in whose office such deputy or clerks are to be employed shall have the sole power of appointing and removing them at pleasure. Any county treasurer who shall receive and appropriate to his own use any part of the salary allowed any clerk or deputy in his office shall be deemed guilty of a misdemeanor. § 2, c. 53, 1891.

ARTICLE 7.—SHERIFF.

§ 2082. Fees to be charged. The sheriff shall be entitled to charge and receive the following fees: § 9, c. 39, Pol. C.
§§ 1, 2, c. 77, 1881.
1, c. 56, 1885.
am'd.

1. Serving *capias* with commitment or bail bond and return, two dollars.
2. For each search on search warrant, one dollar.
3. Arresting under search warrant, each defendant, one dollar.
4. Serving summons, warrant of attachment, order of replevin, injunctional order, citation or other mesne process and return thereon, sixty cents; each defendant besides the first, fifty cents.
5. Copy of summons, or order of attachment, twenty-five cents.
6. Copy of injunctional order, twenty-five cents.
7. Serving subpoena for witness, each person, twenty-five cents.
8. Taking and filing bond in claim and delivery, or other undertaking to be furnished to and approved by the sheriff, one dollar.
9. Traveling expenses for each mile actually and necessarily traveled, ten cents.
10. Making copy of any process, bond or paper, other than herein provided, for each ten words, one cent.
11. Levying writ of execution and return thereof, one dollar.
12. Levying writ of possession with the aid of the county, three dollars and fifty cents.
13. Levying writ of possession without the aid of the county, two dollars.
14. Summoning grand jury, including mileage to be paid by the county, eight dollars.
15. Summoning petit jury, including mileage to be paid by the county, sixteen dollars.
16. Summoning special jury, for each person empaneled, twenty-five cents.
17. Serving notice of motion or other notice or order of court, fifty cents.
18. Executing writ of habeas corpus and return, one dollar and twenty-five cents.

19. Serving writ of restitution and return, one dollar and twenty-five cents.

20. 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.

21. Advertising sale in newspaper, in addition to the publisher's fees, sixty cents.

22. Advertising in writing for sale of personal property, one dollar.

23. Executing writ or order of partition, two dollars.

24. Making deed for land sold on execution or order of sale, two dollars.

25. Committing prisoner to prison, or discharging therefrom, fifty cents.

26. 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' courts.

27. Commissions on all money received and disbursed by him on execution, order of sale, order of attachment, decree or on sale of real or personal property, shall be:

(a) For each dollar not exceeding four hundred dollars, three cents.

(b) For each dollar above four hundred dollars, and not exceeding one thousand dollars, two cents.

(c) For each dollar in excess of one thousand dollars, one cent.

28. 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 judgment, the sheriff or person making such sale shall receive the following compensation:

(a) When the amount for which the property is bid in does not exceed one thousand dollars, the sum of five dollars and no more.

(b) When the amount for which the property is bid in exceeds one thousand dollars, the sum of ten dollars and no more.

29. For selling real property under foreclosure of mortgages by advertisement, the same fees as are allowed by law for the sale of real property under a judgment of foreclosure and sale of such property, and no more.

30. For boarding prisoners, not exceeding seventy-five cents per day each, to be determined by the board of county commissioners.

31. For distributing ballot boxes to the various precincts, two dollars per day and mileage.

32. For executing death warrant, such fee as the board of county commissioners shall deem reasonable and just, to be paid by the county.

33. In all cases where personal property shall be taken by the sheriff on execution or under a warrant of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value thereof as in case of sale.

34. For the expense in taking and keeping possession of and preserving property under attachment, execution or other process such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed three dollars per day, nor must he be so employed, unless the property is of such character as to require the personal attention and supervision of a keeper. No

property must be placed in charge of a keeper if it can be safely and securely stored, or when there is no reasonable danger of loss.

§ 2083. **Mileage for summoning jury.** The sheriff shall be entitled to receive five cents a mile for each mile actually and necessarily traveled in 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 as sheriff for summoning talesmen over and above that fixed by law. § 1, c. 52, 1887.

§ 2084. **Fees for transportation of prisoners and patients.** The necessary expenses and legal fees of sheriffs and other officers incurred in conveying prisoners to the penitentiary or reform school, or patients to the hospital for the insane, shall be audited by the state auditor and paid out of the state treasury. The auditor may allow for such expenses and fees, the following rates: 41, c. 23, 1879.
1, c. 57, 1885.
1, c. 58, 1885.
1, c. 111, 1895.

1. Three dollars per day for the time of the sheriff or other officer necessarily spent in going to and returning from such penitentiary, reform school or hospital by the nearest route.

2. Two dollars and fifty cents per day for each guard necessary for conveying prisoners to the penitentiary or reform school, and one dollar and fifty cents per day for each guard necessary for conveying patients to the hospital for the insane and in either case such sums as may be necessary for railroad or stage fare and actual traveling expenses.

Not more than one guard shall be allowed for one prisoner or patient and one additional guard for every two additional prisoners or patients. When conveyance by team is necessary, a team and driver may be employed at a rate of compensation not exceeding five dollars per day, but not less than forty miles per day shall be taken as a day's travel. All bills shall be in writing and fully itemized and verified by oath, and accompanied by the receipt of the warden of the penitentiary or superintendent of the reform school or of the hospital for the insane for the delivery of such prisoner or patient.

When the commissioners of insanity order the return of a patient, compensation and expenses shall in like manner be allowed and paid out of the state treasury.

§ 2085. **Fees in county and justice's court.** The sheriff, for performing the duties required by law to be performed by him in the county or justice's court, shall receive the same fees as are allowed for similar services in the district court, to be taxed against the proper party. § 10, c.39, Pol.C.

§ 2086. **Fees to be indorsed on process.** 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 such 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 is rendered in the action to which such process relates, he shall receive no fees for such service, and the county commissioners of the county are prohibited from allowing the same. § 1, c. 54, 1883.

§ 2087. **Fees for boarding United States prisoners.** The United States shall be liable to pay for the board of prisoners committed to any county jail in this state by authority of United States

courts the same charges as are allowed for the board of prisoners committed under authority of this state; the United States shall also be liable to pay such sum for guard hire and board of guards as is actually expended by the sheriff; provided, that no sheriff shall employ more than one guard when the number of United States prisoners in his custody is less than six, and but one additional guard for each additional six prisoners or fractional number thereof; provided, further, that there shall not be paid to any guard a sum exceeding two dollars per day for his services for the time actually employed.

§ 2088. Liability of the United States. Whenever United States prisoners are committed to any county jail in this state, the United States shall be liable to pay to the county in which such jail is situated the sum of one dollar per day during the time such county jail is used for the keeping of United States prisoners. The jail rent provided in this section shall be exclusive of the charge for support of United States prisoners provided for in the preceding section.

ARTICLE 8.—CORONER.

§ 11, c. 39, Pol.C.
1, c. 75, 1881.

§ 2089. Fees to be charged. The coroner shall be entitled to charge and receive the following fees:

1. For a view of each body and taking and returning an inquest, five dollars.
2. For a view of each body and examination without inquest, three dollars.
3. For taking information, fifty cents.
4. For issuing subpœna, warrant or order for a jury, fifty cents.
5. For qualifying an inquest, fifty cents.
6. For administering an oath or affirmation to a witness, ten cents.
7. For each adjournment, fifty cents.
8. For taking deposition, drawing and returning inquisition, for each ten words, one cent.
9. For each mile traveled to and returning from an examination or inquest, ten cents.
10. For physician making post-mortem examination of dead body, ten dollars.
11. For all other services rendered, the same fees as are allowed the sheriff, and mileage.

Such 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 has any; otherwise by the county, with mileage for distance actually traveled to and from the place of securing the dead body.

ARTICLE 9.—REFEREES.

§ 12, c. 39, Pol.C.
am'd.

§ 2090. Fees to be charged. Referees shall be entitled to charge and receive the following fees:

1. For copying any paper or instrument or taking testimony, for every ten words, one cent.
2. Swearing each witness, ten cents.
3. Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.

4. And such additional fees as the court shall allow not exceeding in any one case, the sum of ten dollars per day, except by agreement of the parties.

5. Certificate and seal, twenty-five cents.

6. Taking affidavit, twenty-five cents.

7. For all services pertaining to the sale of real estate, the same fees as are allowed by law to the sheriff in like cases.

ARTICLE 10. — NOTARIES PUBLIC.

§ 2091. Fees to be charged. Notaries public are entitled to § 17, c.39, Pol.C.
charge and receive the following fees:

1. For each protest, one dollar and fifty cents.

2. For recording the same, fifty cents.

3. For taking affidavit and seal, twenty-five cents.

4. For administering an oath or affirmation, ten cents.

5. For taking a deposition, each ten words, one and one-half cents.

6. For each certificate and seal, twenty-five cents.

7. For taking proof of acknowledgment, twenty-five cents.

ARTICLE 11. — JUSTICES OF THE PEACE.

§ 2092. Fees to be charged. Justices of the peace shall be § 18, c.39, Pol.C.
entitled to charge and receive the following fees: am'd.

1. Docketing each cause, twenty-five cents.

2. Taking affidavit, twenty-five cents.

3. Filing petition, bill of particulars or other paper necessary in a cause, ten cents.

4. Issuing summons, warrant, subpoena, order of arrest, or venire for jury, fifty cents.

5. Issuing execution, order of sale, or writ of attachment and entering return therein, fifty cents.

6. Issuing writ of restitution and entering return therein, one dollar.

7. Administering oath or affirmation to witness, ten cents.

8. Entering judgment in any cause, fifty cents.

9. Taking acknowledgment of deed or other instrument, twenty-five cents.

10. Swearing jury, twenty-five cents.

11. Copy of appeal, copy of pleadings or other papers for any purpose, for each ten words, one cent.

12. Taking depositions, for each ten words, one cent.

13. Certificate, twenty-five cents.

14. Taking information and complaint, fifty cents.

15. Discharge to jailer, twenty-five cents.

16. Dismissal, discontinuance or satisfaction, twenty-five cents.

17. Written notice to party, ten cents.

18. Filing notice and opening judgment for rehearing, fifty cents.

19. Each adjournment, fifty cents.

20. Performing marriage ceremony, three dollars.

21. Each day's attendance upon the trial of a cause after the first day, two dollars.

22. Taking and approving bail bond, twenty-five cents.

23. Entering voluntary appearance of defendant, twenty-five cents.

24. Issuing attachment, fifty cents.

25. Entering motion, or order, ten cents.
26. Order of reference to arbitrators, fifty cents.
27. Entering award of arbitrators, twenty-five cents.
28. Commission on money collected on judgment without execution shall be one per cent on the amount.

ARTICLE 12. — CONSTABLES. •

§ 19, c.39, Pol.C. **§ 2093. Fees allowed.** Constables shall be allowed the same fees as are allowed to sheriffs for like services.

ARTICLE 13. — COUNTY SURVEYORS.

§ 21, c.39, Pol.C. **§ 2094. Fees allowed.** County surveyors shall be allowed to charge and receive the following fees:

1. For time actually employed, three dollars per day and mileage.
2. For each lot laid out and platted in any city or village, twenty-five cents.
3. For each copy of plat and certificate, fifty cents.
4. Recording each survey, twenty-five cents.
5. For each mile actually and necessarily traveled in going to and returning from work, ten cents.
6. For establishing each corner, twenty-five cents.
7. For ascertaining the location of a city or village lot in an old survey and measuring and marking the same, two dollars.
8. For surveying county roads, three dollars per day.
9. Expenses of necessary assistance shall in addition be paid by the person requiring the work to be done.

ARTICLE 14. — COUNTY COMMISSIONERS.

§ 24, c.39, Pol.C. **§ 2095. Compensation allowed.** County commissioners shall each be allowed for the time they are 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 fund of the county.

ARTICLE 15. — JURORS.

§ 20, c.39, Pol.C.
1, c. 59, 1885.
am'd. **§ 2096. Fees allowed.** Jurors are entitled to receive:

1. For each day's attendance in district court as grand, petit or special juror, to be paid by the county, two dollars.
2. Traveling expenses for each mile actually and necessarily traveled each way, to be paid by the county, five cents.
3. For each day's attendance as juror in justice's court, one dollar.
4. For each day's attendance as juror at coroner's inquest, to be paid by the county, one dollar.

ARTICLE 16. — WITNESSES.

§ 25, c.39, Pol.C. **§ 2097. Per diem and mileage.** Witnesses are entitled to receive for each day's attendance before the district 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 county treasury of the proper county.

§ 2098. Duplicate fees not permissible. A witness who is subpoenaed in two or more cases by the same party shall be entitled only to one compensation from such party for the same day's attendance or travel. § 1. c. 194, 1890.

ARTICLE 17. — PRINTERS.

§ 2099. Legal rates. 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 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; in all legal advertisements fractional parts of twelve lines shall be paid for at the rate of ten cents per line of nonpareil type or its equivalent. § 1. c. 51, 1887.

ARTICLE 18. — FEES IN MATTERS OF ESTRAYS.

§ 2100. Fees allowed. The following fees are allowed in cases of estrays: § 28, c. 39, Pol.C.

1. To justices of the peace, for issuing any warrant of appraisal, fifty cents.
2. For filing and entering in his docket the sworn report of appraisers, fifty cents.
3. Taking and entering the affidavit of the taking up of any estray, fifty cents.
4. For posting notices of estray and certifying to a copy of the sworn reports of the appraisers to the register of deeds, fifty cents.
5. Posting notices and selling an estray, two dollars.
6. Advertising an estray, if published in a newspaper, three dollars.
7. To each appraiser, twenty-five cents.
8. To the register of deeds for entering certified copy of sworn report of appraisers, twenty-five cents.
9. For each inspection of the estray register, ten cents.

ARTICLE 19. — MISCELLANEOUS PROVISIONS.

§ 2101. 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. § 29, c. 39, Pol.C.

§ 2102. 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. § 30, c. 39, Pol.C.

§ 2103. Taxing costs. In all actions, motions and proceedings in the supreme, district, county or justice's courts, the costs of the parties shall be taxed and entered on record separately. § 31, c. 39, Pol.C.

§ 32, c. 39, Pol. C.

§ 2104. Fees paid in advance or security given. The clerk of the supreme court and of each district court, the 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 to give security for the same, to be approved by the officer.

§ 33, c. 39, Pol. C.

§ 2105. Fee bill to be posted. Penalty. All officers whose fees are by this chapter determined are required to make a schedule of their respective fees and keep the same in their respective offices in a conspicuous place; and if any such officer shall neglect to do so, he shall for such neglect forfeit and pay the sum of five dollars, to be recovered by a civil action before any justice of the peace for the use of the county in which the offense was committed.

§ 34, c. 39, Pol. C.
am'd.

§ 2106. Bailiffs, compensation of. It shall be the duty of the district court at each term thereof to appoint a competent number of bailiffs to wait on the jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

§ 35, c. 39, Pol. C.

§ 2107. Per diem oath. Penalty. Each 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 the following form:

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.

CHAPTER 28.

CITIES.

ARTICLE 1. — ORGANIZATION OF CITIES.

§ 1, art. 1, c. 73,
1887.

§ 2108. How city may adopt this chapter. Any city in this state may become incorporated under this chapter 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 chapter 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 two years.

§ 2, art. 1, c. 73,
1887.

§ 2109. Notice of election. The mayor of such city shall give at least twenty 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.

§ 2110. **Form of ballots. Result.** 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 chapter; and the city officers then in office shall thereupon exercise the powers conferred upon like officers in this chapter, until their successors shall be elected and qualified.

§ 3, art. 1, c. 73,
1887.

§ 2111. **Courts to take judicial notice of.** All courts in this state shall take judicial notice of the existence of cities organized under this chapter, and of the change of the organization of any city from its original organization to its organization under this chapter; and from the time of organization the provisions of this chapter shall be applicable to such city, and all laws in conflict herewith shall no longer be applicable. But all laws or parts of laws not inconsistent with the provisions of this chapter shall continue in force and be applicable to any such city the same as if such change had not taken place.

§ 4, art. 1, c. 73,
1887.

§ 2112. **Corporate name. Powers.** Cities organized under this chapter 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, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred.

§ 5, art. 1, c. 73,
1887.

§ 2113. **Rights, etc., of old corporation vest in new.** 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 corporation upon its becoming incorporated under the provisions of this chapter, but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this chapter, 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 chapter, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this chapter, the same shall be deemed cumulative to the remedies before provided and used accordingly.

§ 6, art. 1, c. 73,
1887.

§ 2114. **Record of result of election.** The corporate authorities of any city which may become organized under this chapter 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 chapter.

§ 7, art. 1, c. 73,
1887.

§ 8, art. 1, c. 73,
1887.

§ 2115. Prior ordinances in force. All ordinances and resolutions in force in any city at the date of its organization under this chapter shall continue in full force and effect until repealed or amended, notwithstanding such change of organization, and such change of organization shall not change the legal identity of such city as a corporation.

ARTICLE 2.—THE MAYOR.

§ 1, art. 2, c. 73,
1887.

§ 2116. Mayor, qualifications of. The chief executive officer of the city is the mayor, who shall be a qualified elector within the city, and who shall hold his office for two years and until his successor is elected and qualified.

§ 2, art. 2, c. 73,
1887.

§ 2117. Vacancy, one year or over, how filled. Whenever a vacancy occurs in the office of mayor and the unexpired term is one year or more from the date such vacancy occurs, it shall be filled by an election.

§ 3, art. 2, c. 73,
1887.

§ 2118. Vacancy, less than one year, how filled. If the vacancy is less than one year the city council shall elect one of its number to act as mayor, who shall possess all the rights and powers of the mayor until the next annual election and until a mayor is elected and qualified.

§ 5, art. 2, c. 73,
1887.

§ 2119. Vacancy by removal from city. If the mayor at any time during his term of office removes from the city, his office shall thereby become vacant.

§ 6, art. 2, c. 73,
1887.

§ 2120. Mayor presides. Casting vote. The mayor shall preside at all meetings of the city council, but shall not vote except in case of a tie, when he shall give the casting vote.

§ 7, art. 2, c. 73,
1887.

§ 2121. May remove officer, when. 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.

§ 8, art. 2, c. 73,
1887.

§ 2122. Has power to keep peace. He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace.

§ 9, art. 2, c. 73,
1887.

§ 2123. May release prisoners. 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.

§ 10, art. 2, c. 73,
1887.

§ 2124. General duties. 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.

§ 11, art. 2, c. 73,
1887.

§ 2125. Has power to examine records. 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.

§ 12, art. 2, c. 73,
1887.

§ 2126. Annual message to council. The mayor shall annually and from time to time give the council information relative to the affairs of the city, and shall recommend for its consideration such measures as he may deem expedient.

§ 13, art. 2, c. 73,
1887.

§ 2127. May call out militia to suppress riots. He shall have power when necessary to call on each 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 to carry into effect any law or ordinance.

subject to the authority of the governor as commander in chief of the militia.

§ 2128. Misconduct of mayor or other officer. Penalty. 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 misfeasance in the discharge of the duties of his office, he shall be liable to be prosecuted criminally 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. § 14, art. 2, c. 73, 1887.

§ 2129. Revising ordinances after change of organization. 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 its adoption or rejection an ordinance in revision of the ordinances of such city and for the government 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. § 15, art. 2, c. 73, 1887.

§ 2130. May sign or veto ordinances. He shall have power to sign or veto any ordinance or resolution passed by the council. § 16, art. 2, c. 73, 1887.

§ 2131. Mayor appoints policemen and chief. He shall have power to appoint any number of policemen which he and the city council may deem necessary to preserve the peace of the city, and shall appoint one of the number as chief of police, which appointment of chief shall be subject to the approval of the council. § 17, art. 2, c. 73, 1887.

ARTICLE 3. — CITY COUNCIL.

§ 2132. Council, of whom composed. The city council shall consist of the mayor and aldermen. § 1, art. 3, c. 73, 1887.

§ 2133. Number of aldermen. The number of aldermen shall be as follows: In cities not exceeding two thousand inhabitants, six aldermen; exceeding two thousand but not exceeding four thousand, eight aldermen; exceeding four thousand but not exceeding ten thousand, twelve aldermen; exceeding ten thousand but not exceeding fifteen thousand, fourteen aldermen; and two additional aldermen for each ten thousand inhabitants over fifteen thousand; provided, however, that in cities of over one hundred thousand inhabitants there shall be elected thirty-six aldermen and no more. § 2, art. 3, c. 73, 1887.

§ 2134. Term of office. Aldermen shall hold their office for the term of two years and until their successors are elected and qualified. § 3, art. 3, c. 73, 1887.

§ 2135. Vacancy how filled. If a vacancy occurs in the office of alderman, by death, resignation, removal or otherwise, such vacancy shall be filled by election. § 4, art. 3, c. 73, 1887.

§ 2136. Qualifications of alderman. No person shall be eligible to the office of alderman unless he is a qualified elector of and resides 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 § 5, art. 3, c. 73, 1887.

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 other office under the city government; nor shall he be either 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.

§ 6, art. 3, c. 73,
1887.

§ 2137. Council judge of its members. The city council shall be judge of the election and qualifications of its own members.

§ 7, art. 3, c. 73,
1887.

§ 2138. Rules. Expulsions. Bribery. It shall determine its rules of procedure, 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.

§ 8, art. 3, c. 73,
1887.

§ 2139. Quorum. Compelling attendance. 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.

§ 9, art. 3, c. 73,
1887.

§ 2140. Meetings of city council, when held. 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 may be called. The first meeting for organization shall be held on the third Tuesday in April of each year.

§ 1, c. 29, 1895.

§ 10, art. 3, c. 73,
1887.

§ 2141. President and vice president. It shall at the first regular meeting after the annual election in each year proceed to elect from 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 or temporary disability 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 shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the council the vice president shall perform the duties of the mayor and president of the council.

§ 1, c. 33, 1889.

§ 11, art. 3, c. 73,
1887.

§ 2142. Open doors. Journal. It shall sit with open doors and shall keep a journal of its proceedings.

§ 12, art. 3, c. 73,
1887.

§ 2143. Yeas and nays. Record vote required. The yeas and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the city or for the expenditure or appropriation of 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 members elected shall be necessary to the passage of any such ordinance or proposition. It shall require a two-thirds vote of all the aldermen elected to sell any city or school property.

§ 13, art. 3, c. 73,
1887.

§ 2144. Rescinding vote. Special meetings, etc. No vote of the city council shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of aldermen as were present when such vote was taken.

§ 14, art. 3, c. 73,
1887.

§ 2145. When report of committee laid over. 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.

§ 2146. **Territorial jurisdiction.** The city council shall 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. § 15, art. 3, c. 73, 1887.

§ 2147. **Ordinances, how passed, etc.** All ordinances shall be read twice, and there shall be at least one week intervening 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 approve he shall return to the council with his objections thereto in writing at the next regular meeting of the city council occurring not less than five days after the passage thereof. 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 in the journal. All ordinances passed by the council and approved 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 ordinances so passed and published; and such book or a certified copy of the ordinance 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. All ordinances shall be styled, "Be it ordained by the city council." § 16, art. 3, c. 73, 1887.

ARTICLE 4. —POWERS OF THE CITY COUNCIL.

§ 2148. **General powers of city council.** The city council shall have power: § 1, art. 4, c. 73, 1887.

1. To control the finances and property of the corporation.
2. To appropriate money for corporate purposes only, and provide for 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 to issue bonds therefor, in such amounts and form, and on such conditions as it shall prescribe, but shall not become indebted in any manner, or for any purpose to an amount, including existing indebtedness, to exceed five per cent of the taxable property therein as determined by the last preceding city assessment; provided, that

§§ 1, 2, c. 100, 1890, am'd.

any incorporated city may, by a two-thirds vote, increase such indebtedness three per cent on such assessed value beyond said five per cent limit; and such city shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt when it falls due, and also to pay and discharge the principal thereof within twenty years after contracting the same; provided, that no bonds shall be issued under the provisions of this article, either for general or special purposes, except as hereinafter otherwise provided, unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which such bonds are to be issued and the amount thereof, the legal voters of such city by a majority vote shall determine in favor of issuing such bonds.

6. To issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or funding of the same, or consolidation or funding of any floating indebtedness created by such city prior to the second day of November, 1889, and such bonds may be issued upon resolution of the city council at a general meeting upon a three-fourths vote of all the aldermen elect.

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 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 prescribe.

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 obstructions.

15. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage or any offensive matter in 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, signposts, awnings, telegraph or telephone poles, horse troughs, racks, posting handbills and advertisements.

18. To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or handbills 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 of 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 keep the same in repair within the limits of the corporation.

27. To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property; to compel railroads to raise or lower their tracks to conform to any grade which may at any time be established by such city, and where such tracks run lengthwise of such street, alley or highway to keep their 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 to keep in repair ditches, drains, sewers and culverts along and under their tracks, so that filthy and 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, manholes and cesspools, 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 revoke such license at pleasure.

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 billiard, bagatelle, pigeonhole or any other tables or implements kept or used for a similar purpose in any place of public resort, pin-alleys and ball-alleys.

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 city; 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.

35. To forbid and punish the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor to any minor, servant, or insane, idiotic or distracted person, habitual drunkard or person intoxicated.

36. To establish markets and market houses and provide for the regulation and use thereof.

37. To provide for the place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions, and regulate the selling of the same.

38. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf.

39. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meal and other provisions.

40. To regulate the inspection, weighing, and measuring of lumber, firewood, coal, hay and any article of merchandise.

41. To provide for the inspection and sealing of weights and measures.

42. To enforce the keeping and use of proper weights and measures by vendors.

43. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

44. To regulate places of amusement.

45. To prevent intoxication, fighting, quarreling, dog fights, cock fights, and all disorderly conduct.

46. To regulate partition fences and party walls.

47. To prescribe the thickness, strength, and manner of constructing stone, brick and other buildings, and construction of fire escapes therein.

48. 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.

49. To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, 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 when 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 to cause all such buildings and inclosures as may be in a dangerous state to be put in a safe condition.

50. To erect engine houses and provide fire engines, hose carts, hooks and ladders and other implements for the prevention and extinguishment of fires, and provide for the use and management of the same by voluntary fire companies or otherwise.

51. To regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, 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 bonfires; also to regulate and restrain the use of fireworks, firecrackers, torpedoes, Roman candles, skyrockets and other pyrotechnic displays.

52. To provide for the inspection of steam boilers.
53. 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 jailers and keepers.
54. 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 police ordinances.
55. To prevent and suppress riots, routs, affrays, noises, disturbances and disorderly assemblies in any public or private place.
56. To prohibit and punish cruelty to animals.
57. To restrain and punish vagrants, mendicants and prostitutes.
58. To declare what shall be a nuisance and to abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.
59. To erect and establish hospitals and medical dispensaries, and control and regulate the same.
60. To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.
61. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed, and prohibit their establishment within one mile of the corporation.
62. 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.
63. To direct the location and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundries, breweries, distilleries, livery stables and blacksmith shops within or within one mile of the limits of the corporation.
64. To prohibit any offensive or unwholesome business or establishment within or within one mile of the limits of the corporation.
65. To compel the owner of any grocery, cellar, stable, pigsty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.
66. To provide for the taking of the city census; but no city census shall be taken oftener than once in three years.
67. To provide for the erection and care of all public buildings necessary for the use of the city.
68. To extend, by condemnation or otherwise, 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 impair its usefulness.
69. 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, electric or horse railway company, except upon 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.

70. To tax, license and regulate auctioneers, distillers, brewers, lumber yards, public scales, money changers and brokers.

71. 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 streets or on the sidewalks, or to frighten teams and horses.

72. To regulate and prohibit the keeping of any lumber yard, and the placing or piling or selling of any lumber, timber, wood or other combustible material within the fire limits of the city.

73. 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.

74. To tax, license and regulate secondhand and junk stores and to forbid their purchasing or receiving from minors without the written consent of their parents or guardians, any article whatever, and to prescribe punishment for any violation hereof.

75. To purchase, erect, lease, rent, manage and maintain any system or part of system of waterworks, 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.

76. To redistrict the city into wards and prescribe the boundaries thereof whenever a census of the city shall show the population to be large enough to require two aldermen more than are in the council at the time of the taking of such census.

77. To pass all ordinances, rules and make all regulations proper or necessary to carry into effect the powers granted to cities, with such fines or penalties as the city council shall deem proper; provided, no fine or penalty shall exceed one hundred dollars, and no imprisonment shall exceed three months, for one offense.

§ 2, art. 4, c. 73,
1887.

§ 2149. Actions for violating ordinances. 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 person 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.

§ 3, art. 4, c. 73,
1887,
am'd.

§ 2150. Fines and licenses paid to city treasurer. All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for licenses or otherwise, shall be paid into the city treasury at such times and in such manner as may be prescribed by ordinance.

§ 4, art. 4, c. 73,
1887.

§ 2151. Summons. Affidavit. Punishment. In all actions for the violation of any ordinance the first process shall be a summons; provided, that a warrant for the arrest of the offender may issue in the first instance upon the sworn complaint of any person that any such ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty thereof; and any person arrested upon such warrant

shall without 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 the order of the court before whom the conviction is had be committed to the county jail, city prison, workhouse, 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 each person so committed shall be required to work for the city at such labor as his strength will permit, not exceeding ten hours each working day; and for such work the person so employed shall be allowed, exclusive of his board, one dollar and twenty-five cents for each day's work on account of such fine and costs.

§ 2152. **Jurisdiction of police magistrate.** The police magistrate shall have exclusive jurisdiction in all cases arising under the provisions of this chapter or any ordinance passed in pursuance thereof. § 5, art. 4, c. 73, 1887.

§ 2153. **Who may serve process.** Any constable or sheriff of the county may serve any process or make any arrests authorized to be made by any city officer. § 6, art. 4, c. 73, 1887.

ARTICLE 5. — POWERS AND DUTIES OF OFFICERS.

§ 2154. **Elective officers.** There shall be elected in each city organized under this chapter the following officers: A mayor, two aldermen from each ward, a city treasurer, a police magistrate and a city justice of the peace. § 1, art. 5, c. 73, 1887.
§ 3, c. 33, 1889.

§ 2155. **Term of office.** The elective officers of a city shall hold their respective offices for two years and until their successors are elected and qualified. § 2, art. 5, c. 73, 1887.

§ 2156. **Appointive officers.** There shall be appointed by the mayor with the approval of the city council a city auditor, a city assessor, a city attorney and a city engineer, and such other officers as may by the city council be deemed necessary or expedient. § 3, art. 5, c. 73, 1887.

§ 2157. **Additional assessors.** The mayor of any city incorporated under the provisions of this chapter and containing a population of five thousand inhabitants may appoint one or two additional city assessors; provided, that the city council shall by resolution declare their appointment necessary. § 1, c. 28, 1889.

§ 2158. **Term of office.** The appointive officers of a city shall hold their respective offices for two years and until their successors are appointed and qualified. § 4, art. 5, c. 73, 1887.

§ 2159. **Oath. Bond.** 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: § 5, art. 5, c. 73, 1887.
am'd.

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 North Dakota, and that I will faithfully discharge the duties of the office of....., according to the best of my ability.

Such oath or affirmation so subscribed shall be filed in the office of the city auditor; and all such officers, except the mayor and aldermen, shall before entering upon the duties of their respective offices execute a bond with sureties 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 moneys received by such officer according to law and the ordinances of said city; provided, that in no case 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 the city auditor, except the bond of the city auditor, which shall be filed with the city treasurer.

§ 6, art. 5, c. 73,
1887.

§ 2160. Certificate of Appointment. Delivery of books to successor. All officers elected or appointed under this chapter, except the city auditor, aldermen and 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 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.

§ 7, art. 5, c. 73,
1887.

§ 2161. Qualification of officers. 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.

§ 8, art. 5, c. 73,
1887.

§ 2162. Officer not to be interested in contracts. 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 assessments or by virtue of any process at the suit of the corporation, mayor or other person.

§ 9, art. 5, c. 73,
1887.

§ 2163. Not to hold other office. No mayor, alderman, city auditor or treasurer shall hold any other office under the city government during his term of office.

§ 10, art. 5, c. 73,
1887.

§ 2164. Compensation of mayor. The mayor shall receive such compensation as the city council may by ordinance direct; but his compensation shall not be changed during his term of office.

§ 11, art. 5, c. 73,
1887.

§ 2165. Compensation of aldermen. The aldermen may receive such compensation for their services as shall be fixed by ordinance; provided, that such compensation shall not exceed two dollars to each alderman for each meeting of the city council actually attended by him, and no other compensation than for attendance upon such meetings shall be allowed to any alderman for any services whatsoever; such compensation shall not be changed after it has been once established so as to take effect, as to any alderman voting for such change, during his term of office.

§ 12, art. 5, c. 73,
1887.

§ 1, c. 35, 1893,
am'd.

§ 2166. Police magistrate. Compensation of other officers unchanged during term. All other officers may receive a salary, fees or other compensation to be fixed by ordinance, and after the same has been once fixed such fees or compensation shall not be diminished to take effect during the term for which any such officer was elected or appointed; provided, that in any city incorporated under this chapter and in which the police magistrate thereof is

allowed and paid a salary, such police magistrate shall not be entitled to receive fees of any kind or in any amount whatever from such city, and such police magistrate shall be entitled to and it shall be his duty to collect in all criminal actions and in all actions instituted under any ordinance of the city, the same fees that are now allowed by law to justices of the peace, and all fees collected by him in criminal actions and in actions instituted under any ordinance of the city, shall be by him paid over to the city treasurer at the end of each month, and he shall at the same time make and file with the city auditor a report in writing under oath, showing an account of all fees collected by him during the preceding month in such actions and showing the actions in which the same were collected. The police magistrate shall, before entering upon the discharge of his duties, give to the city a bond in such amount as the city council may prescribe, not less than five hundred dollars, conditioned that he will faithfully discharge the duties of his office and pay over all moneys that may come into his hands belonging to the city, and such police magistrate shall not be entitled to receive nor shall his salary be paid to him until he has fully complied with the provisions of this section.

§ 2167. **Mayor administer oaths.** The mayor and auditor of each city shall have power to administer oaths and affirmations. § 13, art. 5, c. 73, 1887.

ARTICLE 6.—CITY AUDITOR.

§ 2168. **To attend meetings of council and keep records, etc.** 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 competent evidence in all courts. 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. § 1, art. 6, c. 73, 1887.

§ 2169. **Reports by.** 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. § 2, art. 6, c. 73, 1887.

§ 2170. **General duties of.** He shall make or cause to be made estimates of the expenses of any work to be done by the city and 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 officers; and each contract made in behalf of the city or to which § 3, art. 6, c. 73, 1887.

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 shall 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. He shall countersign all bonds, orders or other evidences of indebtedness of the city, and keep accurate accounts thereof stating to whom and for what purpose issued and the amount thereof. He shall keep accounts 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 he shall report to the city council a schedule of all parcels, lots or parcels of land 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 land, which schedule shall be certified to by 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 it deems such tax legal and just, cause the same to be levied in pursuance of the provisions of this chapter. 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, he shall report the same at once to the city council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected is 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, which book shall be open to the inspection of all persons interested.

ARTICLE 7.—BOARD OF AUDIT.

§ 1. c. 31, 1893. **§ 2171. Board of audit.** The mayor and common council of all cities organized under the provisions of this chapter are constituted boards of audit for said cities respectively.

§ 2. c. 31, 1893. **§ 2172. Claims for damages.** All claims against cities for damages or injury alleged to have arisen from the defective, unsafe, dangerous or obstructed condition of any street, crosswalk, sidewalk, culvert or bridge of any city, or from the negligence of the city authorities in respect to any such street, crosswalk, sidewalk, culvert

or bridge, shall, within sixty days after the happening of such injury or damage, be presented to the mayor and common council of such city by a writing signed by the claimant and properly verified, describing the time, place, cause and extent of the damage or injury.

§ 2173. **No action unless claim is presented.** No action shall be maintained against any city as aforesaid, for injuries to person or property, unless it appears that the claim for which the action was brought was presented to the mayor and common council as aforesaid, with an abstract of the facts out of which the cause of action arose, duly verified by the claimant, and that the mayor and common council did not, within sixty days thereafter, audit and allow the same. § 3, c. 31, 1893.

§ 2174. **Bar to action.** It shall be a sufficient bar and answer to any action or proceeding against the city in any court for the collection of any claim or demand, either for injury to property or person, that it had not been presented to the mayor and common council of such city in the manner herein prescribed for audit and allowance within said sixty days as aforesaid. § 4, c. 31, 1893.

ARTICLE 8. — CITY ATTORNEY.

§ 2175. **Duties of.** The city attorney shall perform all professional services incident to his office and when required shall furnish his opinion upon any subject submitted to him by the city council or its committees. § 1, art. 7, c. 73, 1887.

ARTICLE 9 — CITY TREASURER.

§ 2176. **Duties of.** The city treasurer shall receive all moneys belonging to the city, including all taxes, license money and fines, and collect all special assessments as hereinafter provided, and keep accurate and detailed accounts thereof in the manner provided in this chapter or as the city council may from time to time direct. He shall have a settlement with the auditor at the end of each 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. § 1, art. 8, c. 73, 1887.

§ 2177. **How moneys paid out.** Unless otherwise ordered by the council or provided in this chapter 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 place other than in the city then the money for their redemption shall be sent to the place where they are payable in time to meet such payment when due. § 2, art. 8, c. 73, 1887.

§ 2178. **City warrants.** 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 § 3, art. 8, c. 73, 1887.

section on the part of the treasurer shall be sufficient ground for his removal from office by the mayor and council.

§ 4, art. 8, c. 73,
1887.

§ 2179. Treasurer to keep separate accounts. He shall keep a separate account of such fund or appropriation and the debits and credits belonging thereto.

§ 5, art. 8, c. 73,
1887.

§ 2180. Treasurer to give duplicate receipts. He shall give to each person paying money 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.

§ 6, art. 8, c. 73,
1887.

§ 2181. Treasurer prohibited from using city moneys. Penalty. He shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is 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 authorized to declare such office vacant; and the city council shall appoint a successor for the term unexpired of the officer so removed.

§ 7, art. 8, c. 73,
1887.

§ 2182. Treasurer's report. Warrant register. He 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.

§ 8, art. 8, c. 73,
1887.

§ 2183. Special assessments. 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 10. — CITY ASSESSOR AND BOARD OF EQUALIZATION.

§ 1, art. 9, c. 73,
1887.

§ 2184. City assessor, duties of. The city assessor shall perform all duties in relation to the assessing of property for the purpose of levying 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 its regular meeting.

§ 2, art. 9, c. 73,
1887.

§ 1, c. 33, 1893.

§ 2185. Appointment. Assessment roll. The assessor shall be appointed in each even numbered year and shall be governed by the same laws and regulations as county and township assessors, except that he may list and assess any real estate on or after the first day of January in the year in which the same is subject to assessment, and he may likewise list and assess any personal property on or after the first day of April in each year, and shall return his assessment roll to the city auditor on or before the second Tuesday in June of each year. Such assessment roll shall be open to the inspection of all persons interested until the meeting of the board of review.

§ 2186. **Board of equalization meeting.** 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. In the absence of the mayor the council shall elect one of its own number to preside. The city auditor shall act as clerk of said board and keep an accurate record of all changes made in the valuation and of all other proceedings. It may adjourn from day to day until its 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.

§ 3, art. 9, c. 73,
1887.

§ 2187. **Duties of board.** The board of equalization shall meet at the usual place of meeting of the city council, and shall proceed to equalize and correct such assessment roll. It may change the valuation and assessment of any real and 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 so to increase it. Such notice shall be by personal notice served upon the owner or his 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.

§ 4, art. 9, c. 73,
1887.

§ 2188. **Other duties.** 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 any alleged errors in the listing or valuation of his property whether real or personal, and the board may correct the same as it may deem just; or if the board has 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 refuses 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 the last section, and may examine each person under oath in regard to such property; or if he refuses to appear it may fix such valuation at a sum which it may deem just.

§ 5, art. 9, c. 73,
1887.

§ 2189. **Duty of city auditor.** 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 his certificate that the same is correct as equalized by said 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, and the board of equalization of such county may increase or diminish the valuation therein placed on any class of property, so as to make such valuation uniform with the valuation of the same class of property throughout such county, but no individual assessment shall be otherwise changed, and a failure of any county or city board of equalization to hold its meetings shall not vitiate or invalidate any assessment

§ 6, art. 9, c. 73,
1887.
§ 2, c. 33, 1893.

or tax except as to the excess of valuation, or tax thereon, shown to have been unjustly made or levied.

§ 7, art. 9, c. 73,
1887.
§ 3, c. 33, 1893.

§ 2190. Tax levy, how and when made. The city council shall at its first regular meeting in September or within twenty days thereafter levy a tax for general purposes sufficient to meet the expenses of the year based upon the annual appropriation bill for the year, and in addition thereto an additional tax for interest and sinking fund as required by this chapter, and such levy shall be forthwith certified by the city auditor, with any levy made by the board of education of such city for school purposes, to the auditor of the county in which such city is situated. Such levy shall be made in specific amounts and the county auditor of such county shall extend the same upon the tax lists of the county for the current year, in the same manner and with the same effect as other taxes are extended, except that the city tax may be included in one amount, and the school tax in one amount for each person or lot, or parcel of land. The levy herein provided for may be made at the same meeting at which the annual appropriation bill is finally passed, and the provisions of law fixing the times at or within which any act or proceeding in the assessment or levy of any taxes shall be done or taken, shall be deemed and held to be directory and not mandatory.

§ 8, art. 9, c. 73,
1887.
§ 3, c. 100, 1890.
§ 1, c. 116, 1893.

§ 2191. County treasurer to collect taxes and pay over to city treasurer. 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 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.

§ 9, art. 9, c. 73,
1887.

§ 2192. Money paid to city treasurer, how apportioned. 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. — POLICE MAGISTRATE AND CITY JUSTICE OF THE PEACE.

§ 1, art. 10, c. 73,
1887.
§ 5, c. 33, 1889.

§ 2193. Jurisdiction of police magistrate. The police magistrate shall have exclusive jurisdiction of, and it shall be his duty to hear, try and determine all offenses against the ordinances of the city; and he shall have concurrent jurisdiction with the justices of the peace of the county in all other actions, civil and criminal. All fines, penalties and forfeitures for the violation of any city ordinance shall, when collected, be paid by the officer receiving the same to the city treasurer of such city.

§ 2, art. 10, c. 73,
1887.

§ 2194. When magistrate shall issue warrants. Whenever complaint shall be made to the police magistrate upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police magistrate has jurisdiction, such magistrate 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 specially appointed by said magistrate for such purpose.

§ 2195. **Magistrate, when to hear complaint.** When any person shall be brought before such magistrate upon a warrant it shall be his duty to hear and determine the complaint alleged against the defendant. § 3, art. 10, c. 73, 1887.

§ 2196. **Postponement of trials.** Upon good cause shown such magistrate may postpone the trial of the case to a day certain in which case he shall require the defendant to enter into an undertaking with sufficient surety conditioned that he will appear before such magistrate at the time and place appointed and then and there answer the complaint alleged against him. § 4, art. 10, c. 73, 1887.

§ 2197. **To summon witnesses.** It shall be the duty of such magistrate to summon 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 magistrate he may verbally notify such witnesses as may be present to attend before him at the time to which the action is continued to testify therein, and such verbal notice shall be as valid as a summons. § 5, art. 10, c. 73, 1887.

§ 2198. **Trials, how governed.** All trials before said magistrate for misdemeanors arising under the laws of the state shall be governed by the criminal procedure applicable to justices' courts in like cases. § 6, art. 10, c. 73, 1887.

§ 2199. **Concerning judgment of conviction.** In all trials for offenses under the ordinances of the city, if the defendant is found guilty the magistrate shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until such judgment is complied with, in no case to exceed one day for every one dollar and twenty-five cents of fine and costs assessed against said defendant. § 7, art. 10, c. 73, 1887.

§ 2200. **Court open every day except Sunday.** Said magistrate shall be a 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 persons 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. § 8, art. 10, c. 73, 1887.

§ 2201. **Appeals.** In all actions before such magistrate arising under the ordinances of the city, an appeal may be taken by the defendant to the district court of the county; but no appeal shall be allowed unless such defendant shall within ten days, in case of fine, and within twenty-four hours, in case of imprisonment, enter into an undertaking with sufficient surety to be approved by the magistrate, conditioned in case of fine for the payment of said fine and costs and costs of appeal, and in case of judgment for imprisonment, that he will render himself in execution thereof if it should be determined against the appellant. § 9, art. 10, c. 73, 1887.

§ 2202. **Not to remit fines.** Any person convicted before such magistrate 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 circumstances shall such magistrate remit fines or penalties or payment of costs or otherwise. § 10, art. 10, c. 73, 1887.

§ 2203. **City justice of the peace. Jurisdiction.** The city justice of the peace shall have the same jurisdiction as justices of the peace within said county in all civil and criminal actions, and within § 6, c. 33, 1889.

the jurisdiction hereby conferred the power of said justice as a committing magistrate and in the trial of actions shall be the same as is now or may hereafter be provided by law for justices of the peace, and the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' courts; and in all cases tried in said court an appeal may be taken to the district court in the same manner and upon the same conditions as provided by law in cases of appeal from justices of the peace, and on such appeal the district court shall have the same powers as in such cases.

§ 7. c. 33, 1889.

§ 2204. Vacancy. In case of a vacancy in the office of police magistrate by death, resignation or otherwise the city council shall call a special election to fill such vacancy until the next annual election and until his successor is elected and qualified, and in case of the temporary absence, interest or disability of such magistrate it shall be the duty of the city justice of the peace to act as police magistrate during such vacancy, absence or disability in the trial of causes cognizable before said police magistrate.

§ 12. art. 10, c.
73, 1887.
§ 5. c. 33, 1889.

§ 2205. Duty of magistrate when prosecution is malicious. If upon any trial under the provisions of this article it shall appear to the satisfaction of the police magistrate 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 magistrate trying the action 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.

§ 13. art. 10, c.
73, 1887.
§ 5. c. 33, 1889.

§ 2206. Power of magistrate. Jury. The police magistrate shall have power to enforce due obedience to all orders and judgments 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 justices' courts. Appeals may be taken to the district court from all decisions of said court in the same manner as is provided for taking appeals from justices' courts, and the district court shall on such appeals take judicial notice of all the ordinances of said city. Actions before the police magistrate arising under the city ordinances shall be tried and determined by the magistrate 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 magistrate to write down the names of eighteen persons, residents of the city and having the qualifications of jurors in the district 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 police magistrate with the attorney for the city shall strike off such names, and the magistrate shall at once issue his venire to the chief of police commanding him to summon the twelve 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 district court in cases of misdemeanor; and in case the number shall be reduced below twelve by such challenges, or any portion of said number

shall fail to attend, then the chief of police shall summon a sufficient number of talesmen having the qualifications of jurors to complete the panel, which shall in all cases consist of twelve jurors. If either party objects to the competency of a juror the question thereon must be tried in a summary manner by the magistrate, who may examine the juror or other witnesses under oath. Each person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction such fees shall be taxed against the defendant as a part of the costs of the case.

§ 2207. **Proceedings, how governed.** 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. § 14. art. 10, c. 73, 1887.

§ 2208. **Office hours of magistrate.** Said magistrate 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 him at all times in court or otherwise. § 15. art. 10, c. 73, 1887.

ARTICLE 12.—MUNICIPAL COURT.

§ 2209. **Municipal court to be established, when.** A municipal court is hereby established in each incorporated city of this state, having a population of five thousand inhabitants or over. Such municipal courts shall have in addition to the jurisdiction hereinafter conferred, exclusive jurisdiction of all violations of ordinances of the city in which it is established and from the time of its creation all the jurisdiction and the powers heretofore exercised by police magistrates in such cities shall cease. Such court shall be a court of record and have a clerk and a seal, and its jurisdiction shall be coextensive with the limits of the county in which such city is situated. In actions in which there are two or more defendants, if one defendant is served with process within the county, the other defendants may be served at any place within the state.

§ 2210. **Jurisdiction of defined.** Such court shall exercise such jurisdiction as is or may hereafter be conferred by law in civil and criminal actions upon county courts having increased jurisdiction, and in addition thereto it shall have and exercise the same jurisdiction as is now conferred upon police magistrates and justices of the peace. No municipal court shall have any jurisdiction in probate matters, or in actions for divorce or the annulment of marriage.

§ 2211. **Powers of defined.** The municipal court shall have power and authority to issue all process, civil and criminal, necessary and proper to carry into effect its jurisdiction and its judgments and orders; provided, such courts shall not have power to issue writs of habeas corpus, quo warranto, mandamus or prohibition.

§ 2212. **Judge and term of office.** There shall be a judge of such court whose term of office shall be two years and until his successor is elected and qualified.

§ 2213. **Judge to be elected, when.** A judge of such court shall be elected by the qualified electors of such city at the general city election held in April, 1896, and thereafter at the general election for city officers in each even numbered year, and the person receiving the highest number of votes at such election, shall be declared duly elected.

§ 2214. Vacancy, how filled. In case of vacancy in the office of municipal judge by reason of the death, removal from office of such judge or otherwise, his place may be filled in the manner provided for filling vacancies in other elective city offices.

§ 2215. Qualifications of judge. Oath. The judge of such court shall be a resident of the city, a person learned in law and duly admitted to practice as an attorney in the courts of this state; and before entering on the duties of such office he shall take and subscribe the oath prescribed in section 211 of the constitution, which oath shall be filed in the office of the city auditor.

§ 2216. Powers of judge. A municipal judge shall have the general powers of judges of courts of record, and may administer oaths and take acknowledgments. He shall see that the criminal laws of the state and the ordinances of the city are obeyed and executed; and for that purpose he shall hold court each day, Sundays and legal holidays excepted, and proceed to hear and dispose of, in a summary manner, all cases which are brought before him by the police officers of the city or otherwise, either with or without process, for the violation of the criminal laws of this state committed within the county in which such city is situated, or of the ordinances of such city. The judge of such court shall be the chief judicial magistrate of the city.

§ 2217. Power to prescribe rules and regulations. Such judge shall have power to make and prescribe such rules and regulations for the government of the court, not inconsistent with law, as he shall deem proper.

§ 2218. Judge to appoint clerk. The judge of such court shall have power to appoint a clerk who shall act under his authority.

§ 2219. Powers and duties of clerk. The clerk shall have the care and custody of the books, papers and records of the court. He may administer oaths to witnesses and jurors and other persons and take acknowledgments. He shall keep minutes of the proceedings, enter judgments and orders and issue commitments, as well as all other writs and processes, and keep the records of the court under the direction of the judge, and when the judge is absent, he may adjourn the court from day to day. He shall tax all costs and disbursements allowed in each action, subject to review by the judge, and do all other acts necessary and proper in the enforcement of the jurisdiction of the court. He shall receive all fines, penalties and fees of every kind accruing to the court or any officer thereof, including police officers, and keep full, accurate and detailed accounts of the same, and shall on each day deliver to the city or county treasurer, as the case may be, all moneys so received with an itemized account thereof taking the treasurer's receipt therefor.

§ 2220. Duty of city and state's attorney. The city attorney shall have charge of the prosecution of all violations of ordinances of the city, and the state's attorney of the prosecution or examination of offenses against the laws of the state.

§ 2221. May appoint stenographer. Compensation. The judge of such court may appoint a stenographer thereof and fix his compensation, which compensation shall not exceed the sum of five dollars per day for each day actually employed, to be audited by the city auditor and paid out of the city treasury upon the certificate of the judge, and in the performance of his duties such stenographer shall be subject to the orders and directions of the judge of the court

who may at any time discharge such stenographer and employ and appoint another.

§ 2222. **Stenographer's transcript, how paid for.** When the stenographer is required by any party to an action, examination or proceeding, to transcribe his record into longhand, the party requiring the same shall pay to the clerk of such court ten cents per folio of one hundred words for such transcript and three cents per folio of one hundred words for each copy thereof, two-thirds of such amount to be paid to the stenographer and one-third to be paid into the city treasury. If a transcript is ordered by the state's attorney on behalf of the county, the expense thereof shall be audited by the county auditor and paid out of the county treasury upon the certificate of the judge.

§ 2223. **Terms of court.** Such court shall hold regular terms for the trial of civil actions and the hearing of motions on each Tuesday of every month, which term shall continue from day to day until the business of such term is finished. The judge may set cases for trial upon any day in that or any subsequent term. The terms of such court shall open at ten o'clock in the forenoon.

§ 2224. **Clerk to make calendar.** The clerk of the court shall, prior to each term, make a calendar of the causes which will come up for trial or other disposition before the court at such term, in the manner directed by the judge.

§ 2225. **Procedure.** All civil actions and proceedings in such court shall be commenced and conducted as prescribed in the code of civil procedure relating to the commencement, pleading, practice and procedure in the district court as nearly as may be practicable, except as in this article otherwise provided.

§ 2226. **Practice.** The time within which any act is to be done in such court shall be one-half of the statutory period prescribed for district court proceedings, except as follows:

1. No such period shall be less than three days.
2. Two days' notice of taxation of costs shall be given.
3. Notes of issue shall be filed at least three days before the term, and notice of trial shall be served at least four days before the term.
4. The time within which motions for a new trial may be made and appeals taken shall be the same as in the district court.
5. The notice required for taking depositions to be used in such court shall be the same as in the district court.
6. Defaults may be opened and judgments and orders set aside or modified for cause shown within sixty days after the party affected thereby shall acquire knowledge of the same.

§ 2227. **Provisional remedies.** Proceedings by attachment and in arrest and bail and claim and delivery in such court shall be the same as in the district court.

§ 2228. **Depositions, how taken.** Depositions may be taken and used in such court in like manner as in the district court.

§ 2229. **Tenders, how pleaded.** Tenders of money may be pleaded and made in such court in like manner and with like effect as in the district court.

§ 2230. **Executions stayed, how.** Executions may be stayed in such court in like manner as in the district court.

§ 2231. **Judgments confessed, how.** Judgments may be confessed and filed and entered in such court as in the district court.

§ 2232. **Style of process.** All process, except summons, shall

be attested in the name of the judge of such court and issued under the seal of the court, signed by the clerk and directed for service to the sheriff of the proper county, except as herein otherwise provided. The forms of process may be prescribed by the court by rule or otherwise, and any form so prescribed shall be valid and sufficient and such forms may be changed by the court at any time. In the absence of such prescribed forms, the forms in use in the district court may be changed and adapted to the style of the municipal court, and used at the discretion of such court. The provisions of the code of civil procedure relating to the form of summons and the subscription of the same shall as far as applicable be followed in the municipal court.

§ 2233. Summons and subpoenas, how served. The summons and subpoenas may be served by the sheriff or any constable of the county, or any police officer of the city, or by any other person not a party to the action.

§ 2234. Procedure in criminal actions. When sitting as a committing magistrate in the examination of offenses which the municipal court has not jurisdiction to hear, try and determine, the provisions of the justices' code and the code of criminal procedure relating to such proceedings shall be applicable to and govern the municipal court. When trying offenses against the ordinances of the city, the provisions of the preceding article, relating to police magistrates in cities, shall be applicable to and govern the municipal court. The provisions of the justices' code shall be applicable to and control the municipal court in the trial of offenses which justices' courts have jurisdiction to hear, try and determine.

§ 2235. Attorney's fees. In all actions in which the amount of the judgment or the value of the property recovered is less than two hundred dollars, the costs and attorney's fees shall be the same as in justices' courts. In actions in which the amount of the judgment or the value of the property recovered exceeds two hundred dollars, the costs and attorney's fees shall be the same as in the district court.

§ 2236. Trial by jury, how. Trial by jury in such court shall in all respects be conducted as in the district court and all laws of a general nature applicable to jury trials in the district court shall apply to such municipal court.

§ 2237. Jurors, how selected. The judge of the municipal court and the president of the city council of the city shall, on the last Saturday of each month, meet at the municipal court room in such city, and from the electors of such city, select and designate forty-eight of such electors as jurors of such court, to serve when required and drawn, during the succeeding month and until their successors are selected. The clerk of the court shall thereupon write the names of the jurors so selected upon separate slips of paper and place the same in a wheel or box, and whenever a jury is required in such court he shall thereupon by lot, draw, for a jury of six men, twelve jurors, and for a jury of twelve men, twenty-four jurors. The jurors so drawn shall be summoned to attend the trial of the case wherein they were drawn. The first six or twelve jurors drawn shall constitute a jury unless some of such jurors are excused or challenged, in which case the clerk shall call as many of the remaining jurors as may be required to fill the place of the jurors excused. In the event that a jury cannot, for any cause, be filled and sworn from the jurors so summoned, the clerk shall draw other names from such box or wheel and summon the same until the jury is filled; provided, that

each party to a civil or criminal action shall be entitled to three peremptory challenges and no more.

§ 2238. **Compensation of jurors.** Each juror so summoned and attending in such court and sworn in the trial of an action, shall be entitled to like compensation as jurors in justice's court. The party demanding a jury in any civil action shall be required to advance the fees of such jury before the venire shall issue.

§ 2239. **New trials, when granted.** Municipal courts shall have power to grant new trials of all causes tried before such courts and the provisions of the codes of civil and criminal procedure relating to new trials shall be applicable to such courts.

§ 2240. **Appeals to supreme court.** Any cause in which the amount of judgment or the value of the property recovered exceeds the sum of two hundred dollars, or in which the title or boundary of real property comes in question may be removed by appeal from the municipal court to the supreme court of the state, in like manner and upon like proceedings, and with like effect, as from the district court, and the supreme court shall have the same power on any such appeal as on appeals from the district court, and all the provisions of the code of civil procedure relative to appeals from the district court shall be applicable to such appeals. Any cause in which the amount of the judgment or the value of the property recovered, is two hundred dollars or less, and actions of forcible detainer, may be appealed from the municipal court to the district court in like manner and upon like proceedings and with like effect as appeals from courts of justices of the peace, and the provisions of the justice's code relating to appeals to the district court shall be applicable to all appeals in such cases.

§ 2241. **Judgment a lien upon real property, when.** No judgment rendered in such court shall attach as a lien upon real property until an abstract thereof is filed in the district court. Any person in whose favor a judgment is rendered in the municipal court may demand and receive from the clerk an abstract of such judgment, duly certified, and file the same in the office of the clerk of the district court in the proper county, who shall file and docket the same as in the case of abstracts of judgments from justices' courts. Every judgment shall become a lien upon the real estate of the debtor from the time of filing such abstract to the same extent as a judgment of the district court, and shall thereafter, so far as relates to the enforcement of the same, be exclusively under the control of such district court, and carried into execution by its process the same as if rendered in such district court.

§ 2242. **Powers of police officers.** The police officers of the city are vested with all the powers of constables in matters pertaining to the municipal court. The police officers of such city must serve all process or other papers delivered to them in such court. All such process shall be delivered to the chief of police, and he shall see that the same is faithfully served and duly executed, except as otherwise provided herein.

§ 2243. **Mayor to designate police officer.** The mayor of the city shall designate a police officer to attend upon such court, and such officer shall attend and obey the orders of the court.

§ 2244. **Salary of judge and clerk.** The salary of the judge of the municipal court shall be two thousand dollars per annum, payable out of the city treasury in equal monthly installments. The

clerk of the municipal court shall receive a salary of nine hundred dollars per annum, to be paid out of the city treasury in equal monthly installments.

§ 2245. Fees, commissions and mileage, how disposed of. The fees, commissions and mileage of the officers serving or executing any process of such court shall be the same as in similar cases in the district court. The fees of police officers serving process, except mileage, shall be covered into the city treasury. The fees of the clerk of such court shall be the same as the fees of the clerk of the district court, and shall be paid into the city treasury and an account thereof kept and rendered substantially as provided in article 2 of chapter 27 of this code, and the provisions thereof shall be applicable to clerks of municipal courts.

§ 2246. Judge to hold court. The judge of the municipal court may hold sessions and act as such court, and shall be possessed of all the powers and authority of such court. Such judge may act at any time or upon any occasion deemed proper by him.

§ 2247. Judge may practice in district and supreme courts. Such judge may practice in the district and supreme courts of this state in cases which have not been tried before him.

ARTICLE 13. — CITY ENGINEER.

§ 1, art. 11, c. 73,
1887.

§ 2248. Qualifications. The city engineer shall be a practical surveyor and engineer. 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 inspection by all persons interested; and the same together with all the 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 to the city council.

ARTICLE 14. — POLICE OFFICERS.

§ 1, art. 12, c. 72,
1887.

§ 2249. Powers of. 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 magistrate or city justice of the peace for any violation of the laws of the state or of the ordinances of said city or any provisions of this chapter; and also all writs and process whatsoever issued by said justices 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 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.

§ 2250. **Warrants.** All warrants issued by the police magistrate 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 when he goes outside of the city to make an arrest shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy or a constable to make the arrest might endanger an escape.

§ 2. art. 12, c. 73.
1887.

ARTICLE 15. — ELECTIONS.

§ 2251. **Time and place of.** There shall be an annual election for elective officers herein provided, held on the first Monday in April of each year at such place or places in each ward as the council shall designate, and the polls shall be kept open continually from eight o'clock in the forenoon until five 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.

§ 1. art. 13, c. 73.
1887.
40, c. 66, 1891.
1. c. 60, 1893.

§ 2252. **Election districts and precincts.** Each ward shall constitute an election district; but whenever the number of legal voters in any ward shall exceed three 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, that such ordinance shall be passed and take effect before the time of giving notice of an election; and said wards and precincts shall constitute election districts for all state and county elections.

§ 2. art. 13, c. 73.
1887.
am'd.

§ 2253. **Qualified voters.** Every legal voter of the county in which such city is situated who shall have been a resident of the city ninety 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 resides.

§ 3. art. 13, c. 73.
1887.
§ 121. Const.

§ 2254. **Board of aldermen divided by lot into two classes.** At the first election under this article 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.

§ 4. art. 13, c. 73.
1887.

§ 2255. **Oath and duties of judges and clerks of elections.** The manner of conducting and voting at elections to be held under this article, and contesting the same, the keeping of 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 elections 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 general state elections. After the closing of the polls the ballots shall be counted and the returns made out and returned under seal to the city

§ 5. art. 13, c. 73.
1887.

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 entered on its journal.

§ 7, art. 13, c. 73,
1887.

§ 2256. **What elects. Tie, how decided.** 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 the presence of the city council in such manner as it shall direct, which candidate or candidates shall hold office.

§ 8, art. 13, c. 73,
1887.

§ 2257. **City auditor to notify officers elected or appointed.** It shall be the duty of the city auditor within five 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 respectively qualify within ten days after such notice the office shall become vacant.

§ 9, art. 13, c. 73,
1887.

§ 2258. **New election on failure to qualify.** 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 may forthwith order a new election therefor, and in all cases when necessary for the purposes of this chapter may call special elections, canvass the returns thereof, and provide by ordinance for the mode of conducting the same; and shall give notice of such special elections in which 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.

§ 10, art. 13, c.
73, 1887.

§ 2259. **When term of office commences.** The term of each officer elected under this chapter shall commence on the third Tuesday of April of the year for which he was elected.

§ 11, art. 13, c.
73, 1887.

§ 2260. **When office deemed vacated.** Any officer removing 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 16. — FINANCE.

§ 1, art. 14, c. 73,
1887.

§ 2261. **Fiscal year.** The fiscal year of each city organized under this chapter shall commence on the first day of September of each year.

§ 2, art. 14, c. 73,
1887.

§ 2262. **General appropriation, how made.** The city council shall at its regular meeting in September of each year or within ten days thereafter pass an ordinance, to be termed the annual appropriation bill, in which it may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation; and such ordinance shall specify the purposes for which such appropriations are made and the amount appropriated for each 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.

§ 3, art. 14, c. 73,
1887.

§ 2263. **Special appropriation for improvements, how made.** 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 herein otherwise specially provided; and no expenditure for an 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, that nothing herein contained shall prevent the city council from ordering by a two-thirds vote any improvement, the necessity of 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 expense necessary 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 the 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 next 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.

§ 2264. **Contracts, how made.** No contract shall be made by the city council and no expense shall be incurred by any officers or departments of the corporation, whether the object 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.

§ 4, art. 14, c. 73,
1887.

ARTICLE 17. — SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS.

§ 2265. **City council to make.** The city council shall have power to make assessments for local improvements on property adjoining or benefited thereby, including extension of water mains in cities exclusively owning and operating a public system of waterworks, and collect the same in the manner hereinafter provided, and to fix, determine and collect penalties for nonpayment of any special assessment and taxes.

§ 1, art. 15, c. 73,
1887.
§ 1, c. 95, 1890.

§ 2266. **Commissioners of local improvements, how appointed.** The council upon ordering any improvements to be paid for by special assessments 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 property or any other damages arising from the making of such improvement. Such commissioners shall be notified as soon as practicable by the city auditor to attend at his office at a time to be fixed by him for the purpose of qualifying and entering upon their 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 magistrate as in the 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 council.

§ 2, art. 15, c. 73,
1887.
§ 1, c. 27, 1895.

§ 3, art. 15, c. 73,
1887.

§ 2267. Oath of commissioners. 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 return of their action and doings to the city council.

§ 4, art. 15, c. 73,
1887.

§ 2268. Duties of commissioners. 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 parcels 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 proceed to view the premises and assess the damages for property to be taken or which may be damaged by such improvement.

§ 5, art. 15, c. 73,
1887.

§ 2269. Same. At the time and place mentioned in such notice the commissioners shall view the premises and may hear any evidence or proof offered by the persons interested, and adjourn from day to day if necessary for the purpose aforesaid. When the view and hearing aforesaid shall be concluded they shall determine and assess the amount of damages to be paid to the owner of each parcel of property proposed to be taken or which may be damaged by such improvement, and in so doing 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 which will accrue to such owner in making such improvements; and in case the making of such improvements should require the removal of any building or otherwise injure any permanent improvements the commissioners shall assess the damage separately from the damages to the land upon which they are erected.

§ 6, art. 15, c. 73,
1887.

§ 2270. Same. If the lands and buildings belong to different persons, or if the land is subject to lease, mortgage or judgment, or if there is 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 by the commissioners, less the benefit resulting to them from the improvement; provided, that the person owning such interests or his authorized agent shall make application to such commissioners for such division of the award prior to the filing of their report.

§ 7, art. 15, c. 73,
1887.

§ 2271. Same. The 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 action in the premises, embracing a schedule or assessment of the 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 costs of the proceedings.

§ 8, art. 15, c. 73,
1887.

§ 2272. Duty of city auditor on report of commissioners. Upon such report being filed in the office of the city auditor such auditor shall give at least ten days' notice by publication in the official newspaper of such city, to the effect that such assessment has 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 power in its discretion to confirm, revise or annul the assessment, giving due consideration to any objections

interposed by persons interested; if the report is not confirmed by the city council proceedings may be taken anew to assess the damages.

§ 2273. Damages for local improvements, how paid. The damages assessed shall be paid out of the general fund of the city, and shall be paid, tendered or deposited and set apart in the city treasury to and for the use of the persons entitled thereto within six months after the confirmation of such assessment and report, and in case the city council is unable to determine to whom the damages in any particular case so awarded shall be paid, or in case of disputed claims in relation thereto, the damages in such case may be deposited by order of the city council in the district court of the county in the same manner as moneys are paid into court, until the persons entitled thereto shall substantiate their claims. § 9, art. 15, c. 73, 1887.

§ 2274. Proceedings when improvements to be made. **Damages.** Whenever in making such improvement it shall be necessary to remove any building or any part thereof, the commissioners shall assess the damage to the owner thereof in case the building is 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 elects to remove such 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 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 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. § 10, art. 15, c. 73, 1887.

§ 2275. Party aggrieved may appeal. No pleadings required. Any person feeling himself aggrieved by the assessment may by notice in writing served on the proper officers of the city, a copy whereof with proof of service shall be filed in the office of the clerk of the district court of such county, within twenty days after the confirmation of said report or assessment, appeal from such assessment to the district court aforesaid, when such appeal shall be tried by the 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 urge any other objections than those specified, 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. 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 and the judgment of such court therein shall be final. § 11, art. 15, c. 73, 1887.

§ 2276. Profiles, where filed. Whenever any public ground, street or alley shall be laid out, widened or enlarged under the provisions of this article, 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 in the office of the register of deeds of the county in which such city is situated. § 12, art. 15, c. 73, 1887.

§ 13. art. 15, c.
73, 1887.

§ 2277. Petition to vacate streets and alleys, how made. Party aggrieved may appeal to district court. 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 a majority of the owners of 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 shall thereupon 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 thereof 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 it for the purpose, at the time and place appointed shall investigate and consider the matter and shall hear the testimony and evidence of persons 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 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 person aggrieved thereby may within twenty days after publication of such resolution appeal to the district 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.

§ 14. art. 15, c.
73, 1887.

§ 2278. Records of city auditor prima facie evidence of matter therein contained. 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 said 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 such 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.

§ 15. art. 15, c.
73, 1887.
§ 2. c. 95, 1890.

§ 2279. Resolution declaring work necessary. When the city council shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain, or otherwise improve any street, alley, avenue, lane or highway, or other public grounds within the city limits or extend or improve any public system of water-works exclusively owned and operated by the city 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 such improvement, then the city council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect the assessment as hereinafter provided, and all work done under this section shall be let by contract to the lowest responsible bidder therefor.

§ 2280. Assessments for improvements, how made.

§ 16, art. 15, c. 73, 1887.

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 bounding upon such improvement. And in estimating the assessment he shall take the entire cost of such improvement 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 bounding or abutting, and said estimate shall be filed with the city auditor and shall be presented to the city council for its approval at the first meeting held thereafter. The city auditor shall cause said estimate of the city engineer, together with a notice of the 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.

§ 2281. Action to avoid tax. Judgment.

§ 1, c. 36, 1893.

Whenever any action or proceeding shall be commenced and maintained before any court to prevent or restrain the collection of any special assessment or part thereof, made or levied by the officers of any city, town or village, organized under and by virtue of a special act or charter, or under and by virtue of the general law of the state, for the improvement of its public streets by construction of sidewalks, grading or paving the same, or the construction of sewers or the extension of water mains, or for any other purpose authorized by law, and whenever any action or proceeding shall be commenced and maintained as aforesaid to vacate or set aside any sale of real estate under such special assessment or to cancel any tax certificate or deed given under such sale, and such assessment shall be held to be void by reason of noncompliance with this article, the court shall determine the true and just amount which the property attempted to be so assessed by said special assessment should pay to make the same uniform with other special assessments for the same purpose, and the amount of such assessment as the same appears on such list shall be prima facie evidence of such true and just amount and judgment must be rendered and given therefor against the party liable for such special assessment without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which a special assessment should have been levied, and the lien of such judgment shall be enforced by the court in such action.

§ 2282. Publication of notice.

§ 2, c. 30, 1889.

In all actions and proceedings commenced to prevent or restrain the collection of any special assessment made by the proper municipal officers of any city, town or village where it shall appear upon trial that the person seeking to avoid the payment of such special assessment, knew that the improvements were being made under a special assessment, and that the abutting

property was charged with such improvements, and knowingly permitted such improvements to be made without commencing any proceedings to prevent the same, said assessment shall be legal and valid, notwithstanding the provisions of the charter or general law under which the city, town or village was incorporated required the publication of a resolution by the municipal authorities that they deemed the improvement necessary, and its publication in a newspaper a certain number of successive weeks has not been complied with; provided, it shall appear that said resolution was passed by said municipal authorities and published the number of times and in the newspaper required, on any day during successive calendar weeks.

§ 1. c. 31. 1889. **§ 2283. Reassessment.** Whenever the city council of any city, incorporated under the general law, or by special act or charter, has heretofore, upon a petition of a majority of the abutting property owners upon any street made a special assessment for grading or paving the same and assessed the abutting property uniformly and in the same amount per front foot, and proceeded to pave or grade the street in accordance with the petition, and it appears that the ordinance or other proceedings in making the assessment were for any reason invalid, the city council is authorized and empowered to reassess all the real property abutting on such improvement, upon which the special assessment for the same has not been paid, upon the front foot plan in such sum as may be sufficient to pay its just proportion of the cost of such improvement.

§ 2. c. 31. 1889. **§ 2284. Notice.** The city council shall by resolution declare the entire cost of the improvement for which all the abutting property was liable, with a description of the abutting property which such city council proposes to reassess for its proportion of the cost of such improvement, also the aggregate sum it proposes to assess against said property and the amount per front foot and shall state in said resolution when and where it will meet to hear any objections the abutting property owners may have to such reassessment, which resolution shall be published two successive weeks in some newspaper published in the city.

§ 3. c. 31. 1889. **§ 2285. Mode of assessing.** At any time after the time fixed for hearing objections as provided in the last section, the city council shall by resolution proceed to reassess all the property abutting upon such improvement upon which the special assessment first made has not been paid, at its just and equal share of the cost of such improvement per front foot, and shall apportion and assess to each lot or parcel of land upon which such special assessment has not been paid its just proportion of the amount remaining unpaid per front foot, which assessment shall be and remain a lien upon the respective lots and parcels of land so assessed.

§ 4. c. 31. 1889. **§ 2286. Publication of assessment roll.** After the assessment above provided for shall have been made and approved by the city council, the city clerk or auditor shall forthwith make an assessment roll describing the property so assessed, with the name of the owner if known, and the amount assessed to each lot or parcel of land as approved by the city council, and attach thereto a copy of the resolution 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 forthwith publish said list three successive weeks, at least once in each week, in a newspaper published in said city, together with a notice that said assessments will become

delinquent if the same are not paid within thirty days after the date of the first publication, together with a notice that a penalty of ten per cent will be added thereto after they become delinquent.

§ 2287. Interest and collection. All such assessments from and after becoming delinquent shall draw interest at the same rate from the date of such delinquency, as delinquent taxes under the laws of the state, and the city treasurer shall proceed to collect the same, if he cannot make the tax by distress and sale of personal property, in the manner and as prescribed in sections 2295 to 2307. § 5, c. 31, 1889.

§ 2288. Assessments, how paid. Penalty for nonpayment. After the estimate provided in section 2280 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 resolution 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 cent 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. § 17, art. 15, c. 73, 1887.

§ 2289. Grade of streets. 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 in this section the city shall, if it changes the grade, be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements having been made by them to conform to the grade as first established. § 18, art. 15, c. 73, 1887.
§ 8, c. 33, 1889.

§ 2290. Sidewalks, width of, etc. The city 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 provide by ordinance for the letting of contracts for building the same. § 19, art. 15, c. 73, 1887.

§ 2291. Sidewalks, how built and repaired. Whenever the city council shall deem it necessary to construct, rebuild or repair, except as hereinafter provided, any sidewalk in the city, it shall notify each owner and occupant of any lot or parcel of land adjoining such sidewalk to construct, rebuild or repair the same at his own expense within a time designated, by the publication in the official paper of the city once in each week for two consecutive weeks of a notice to such owner or occupant, setting forth what work is to be done and the character of the same, and the time within which he is required to do the same. Such notice may be general as to the owner, but must be specific as to the description of the lot or parcel of ground in front of which such sidewalk is to be built. § 20, art. 15, c. 73, 1887.

§ 2292. Council contract for sidewalks, when. If such work is not done and the sidewalk not built, repaired or rebuilt in the manner and within the time prescribed in such notice, the city council may order the same to be done by such person as it may contract with and under the direction of the city engineer, at the expense of § 21, art. 15, c. 73, 1887.

the lot or parcel of land adjoining such sidewalk, and such expense shall be assessed upon each lot and parcel of land so chargeable, by the city engineer and returned by him to the city council, and the city auditor shall cause to be published said estimate of the city engineer, together with a notice of the time and place when the city council will meet to approve the same, by one publication in the official newspaper of the city for at least ten days prior to the meeting of the council to approve the same, and said assessment so made and returned, if approved by the council, shall be a lien upon such lots and parcels of land on and after such approval.

§ 22, art. 15, c.
73, 1887.

§ 2293. Assessments for sidewalks. Penalty for non-payment. 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 due and payable to the city and if not paid within sixty days thereafter there shall be a penalty of ten per cent added thereto.

§ 23, art. 15, c.
73, 1887.

§ 2294. Council may pay for repairing sidewalks, when. The city council may provide by ordinance for repairing sidewalks where the amount of such repairs does not exceed the sum of ten dollars for fifty feet of such walk, and may pay for the same out of the general fund if deemed expedient.

§ 25, art. 15, c.
73, 1887.

§ 2295. Sale of real property for special taxes. There shall be a sale of all real property for all due and unpaid special assessments thereon for local improvements other than sewers, held on the first Monday in March and the first Monday in December of each year, and whenever any special assessment for such local improvements shall have been levied as provided in this chapter, 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 of 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 the property upon which such assessment is unpaid, with the amount of such assessment including penalty and costs of advertising, which costs shall be ten cents for each tract or parcel of land, and also the day and place of sale.

§ 26, art. 15, c.
73, 1887.

§ 2296. Treasurer to adjourn sale, when. At ten o'clock in the forenoon of the day mentioned in such notice of sale the city treasurer or his deputy shall attend at the place designated 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 such 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.

§ 27, art. 15, c.
73, 1887.

§ 2297. Highest bidder. What part of property sold. 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 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.

§ 2298. **Failure of bidder to pay.** Should any person bidding fail forthwith to pay the amount due, 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 as hereinafter provided. § 28, art. 15, c. 73, 1887.

§ 2299. **Record and report of sale.** The city treasurer shall keep a record of such sale 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, amount sold for, if sold, and if not sold it shall be so stated and the reason, and within ten days after the close of such sale the city treasurer shall file in the office of the city auditor a return of such sale showing the land or lots sold, the names of the purchasers and the sums paid by them, and also a copy of the notice of sale, with a certificate of advertisement verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings. § 29, art. 15, c. 73, 1887.

§ 2300. **Certificate of purchase. Fee.** 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. Such 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. § 30, art. 15, c. 73, 1887.

§ 2301. **Private sale. Certificate.** 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 such property was offered for sale shall draw interest at the rate of eighteen per cent 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 the same was offered for sale to the time of the purchase, and to deliver to such purchaser a certificate as provided in section 2300, 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 the additional statement inserted in said certificate that such land or lots were offered at public sale for such assessment but not sold for want of bidders, and he shall indorse on the certificate "sold for special assessment at private sale." § 31, art. 15, c. 73, 1887.

§ 2302. **Tax deed. Form of. Redemption.** 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: § 32, art. 15, c. 73, 1887.

TAX DEED.

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 the state of North Dakota, a certificate of purchase in writing, bearing date the....day of....., 189...,

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 the 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 the nonpayment 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 lands 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 this....day of....., 189..., between the city of.....county of.....and state of North 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 has granted, bargained and sold, and by these presents does 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 thereto 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 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.

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 such land sold for with costs and interest on the same at the rate of twenty-four per cent per annum from the date of such sale; provided, that the lands or lots belonging to minors or any interest they may have in any land 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.

§ 33, art. 15. c.
73, 1887.

§ 2303. Redemption by part owner. 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 bounding or abutting on said improvement, or if his interest is undivided he shall pay the proportion that his interest bears to the whole amount, and the conveyance shall be made for the part or proportion unredeemed.

§ 34, art. 15. c.
73, 1887.

§ 2304. Certificate surrendered when deed issues. Record. 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 2302, 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 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 a record of the date of said deed and to whom made, and shall cancel the certificate and file the same with the city auditor.

§ 2305. Error not to invalidate deed. 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 land correctly described, but any tract or parcel so omitted or erroneously described may be advertised and sold at the next succeeding sale. § 35, art. 15, c. 74, 1887.

§ 2306. Sale not invalidated, when. No exemptions. 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. § 36, art. 15, c. 73, 1887.

§ 2307. Action for possession limited. No action shall be commenced by the former owner of lands or lots or by any person claiming under him to recover possession of such lands or lots which have been sold and conveyed by deed for nonpayment 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 such 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. § 37, art. 15, c. 73, 1887.

§ 2308. Council may issue bonds. Limitation. For the purpose of 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 cent of the valuation of all property in the city, as may appear by the last tax list 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. § 38, art. 15, c. 73, 1887.

§ 2309. Internal improvement bonds. Such 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 a rate not exceeding seven per cent per annum, payable annually or semiannually as may be determined by the city council, and shall be known as "internal improvement bonds," and payable, principal and interest, either in New York city or the city issuing the same. Said bonds shall become due and payable in not less than twenty years from the date of issuance thereof, and shall not be sold or negotiated at a less rate than ninety-five per cent of their face value. § 39, art. 15, c. 73, 1887.

§ 40, art. 15, c.
73, 1887.

§ 2310. Proceeds, how disposed of. 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 material 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 assessment has 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.

§ 41, art. 15, c.
73, 1887.

§ 2311. Mayor and auditor to sign bonds and contracts. All bonds of the city and all contracts and conveyances, except tax deeds, shall be signed by the mayor and countersigned by the 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.

§ 1, c. 43, 1891.

§ 2312. Assessment for waterworks. The city council of any city owning and operating a system of public waterworks and hydrants for the purpose of supplying its inhabitants with water and with fire protection, for the purpose of equalizing the burden of expense of operating such system, shall have the power to make an annual assessment for each fiscal year, for not to exceed one-half of the expense of operating such system, on the property abutting or bounding upon the streets and avenues of the city in which the mains of said system are laid and operated, and to collect such assessment in the manner provided in this article for the collection of assessments for other local improvements; and to fix, determine and collect penalties for the nonpayment of any such special assessments; provided, that nothing herein contained shall be construed as making it obligatory upon the city council to raise any portion of the funds necessary for operating such system, by special assessment; and provided, further, that any portion less than one-half of the sum needed for operating said system may at the discretion of the city council be raised by such assessment; and such assessment in all cases shall be exclusive and independent of water rates or rents collected from water consumers.

§ 1, c. 43, 1891.

§ 2313. Assessment, how levied. Whenever the city council shall deem it necessary to levy the assessment authorized by the last section it shall pass a resolution to that effect, and shall estimate the cost of operating the water system for the next fiscal year, and shall specify in said resolution the portion of the sum so estimated for which a special assessment is to be levied.

§ 1, c. 43, 1891.

§ 2314. Benefits, how determined. The city auditor, the city treasurer and the city assessor shall constitute a board to calculate the amount of the sum so determined upon by the city council to be assessed on each lot or parcel of ground abutting or bounding upon the streets or avenues of the city in which the mains of the water system are laid and operated, which assessment shall be made in proportion to the benefits of such water system and fire protection to the respective lots or parcels of ground situate as aforesaid, and said estimate shall be filed with the city auditor and shall be presented to the city council for its approval at the first meeting held thereafter, and the city auditor shall cause notice of the time and place when and where the city council will meet to approve 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, at which meeting

any person complaining of such assessment shall be heard and any errors in the same corrected. After said assessment shall be approved by the city council, it shall be proceeded with by the proper officers in the same manner as is provided in this article for assessments for other local improvements.

ARTICLE 18. — SEWERAGE.

§ 2315. **City council to establish and maintain.** The city council shall have power to establish and maintain at any time a general system of sewerage for said city in such manner and under such regulations as the city council shall deem expedient and to alter or change the same from time to time as the council shall deem proper; provided, that no action shall be taken for the establishment of such system of sewerage except upon the affirmative vote of at least two-thirds of the members of the city council; provided, further, that whenever a majority of the residents on any street or part of street owning land abutting thereon shall petition the city council for the construction of a sewer on such street or part of street as a part of or to connect with such system of sewerage, all measures necessary for the construction of such sewer may be taken by a vote of the majority of the city council.

§ 1, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2316. **Construction, alteration and repairs.** The cost of constructing, altering or repairing any of the sewers or improvements herein provided for or referred to shall be estimated by the city engineer of the city or such other competent engineer as may be selected by the city council for such purpose, who shall draw plans and specifications therefor; and such estimate together with such plans and specifications shall be filed with the city auditor before any bids for work thereunder are advertised for, and shall remain on file in his office and shall be open to the inspection of all persons until after the contract for such work shall be let. The city engineer shall retain a copy of such plans and specifications in his office and shall furnish to any person applying therefor copies of the same, and may charge and receive for such copies at the rate of one dollar an hour for the time necessarily employed in making the same.

§ 2, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2317. **Proposals for construction.** The city council shall then cause proposals for said work to be advertised for in the official paper of such city, once in each week for three consecutive weeks, which advertisement shall specify the work to be done and shall call for bids upon a basis of cash payment for said work. Bids for such work shall be forwarded to the city auditor of such city securely sealed so as to prevent their being opened without detection and shall be indorsed upon the outside thereof with a statement as to what work such proposals are for. Each bid shall be accompanied by a bond running to such city in the penal sum of at least fifty per cent of the amount of the bid, which bond shall be executed by the bidder as principal and by two or more good and sufficient sureties who shall justify in the manner required in arrest and bail, which bond shall be conditioned that the bidder will well and faithfully perform the work bid for pursuant to the plans and specifications therefor, in case such contract is awarded to him, and that in case of default on the part of the bidder to perform such work as provided in his contract, or in case of his failing to enter into such contract in case the same shall be awarded to him under his bid therefor, that the sum named

§ 3, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

in said bond shall be taken and held to be fixed and liquidated damages in favor of said city, and that the full amount thereof may be recovered from said bidder and his sureties in an action by the city against them on said bond. Such bids shall be opened by the city council at the expiration of the time limited in said notice for receiving the same, or at such other time as the city council may appoint therefor.

§ 4, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2318. Contracts, how made. The city council shall have the right to reject any and all bids for such work if in its opinion the interests of the city will be best subserved by so doing; but if all such bids are not rejected the contract shall then be awarded to the lowest responsible bidder upon the basis of cash payment therefor; provided, that such bidder shall have complied with the foregoing requirements and shall have guaranteed to the satisfaction of the city council the proper and speedy completion of said work. Such contract shall be entered into in the name of the city and shall be executed on the part of the city by the mayor thereof and countersigned by the city auditor with the corporate seal of the city affixed and an attested copy thereof shall be filed in the office of the city auditor. No such contract, except for the construction of a sewer upon petition as provided in section 2315, shall be awarded except upon a two-thirds vote of all the members of the city council, and there shall be reserved in each contract so let the right of the city council in case of the improper construction of such work to suspend work thereon at any time and to relet the contract therefor or to order a reconstruction thereof, or of any part thereof improperly done.

§ 5, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2319. Part payments. Amount reserved. In case the contractor to whom any such contract shall be let shall properly perform the work therein designated the city council may, from time to time in its discretion as the work progresses, pay to such contractor upon an estimate made by the city engineer of the amount already earned thereunder sixty per cent of the amount shown by such estimate to have been so earned.

§ 6, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2320. Method of payment. Bonds. For the purpose of paying for the construction of such sewers the city council shall provide as follows:

1. The city council shall forthwith upon the letting of any contract under the provisions hereof create, by appointment of three persons from among the citizens of such city, a "special sewerage assessment committee," each member of which shall file with the city auditor a written acceptance of such appointment and take and subscribe an oath faithfully and impartially to discharge the duties of his position as a member of such committee, which oath shall be filed with the city auditor, and one of such persons shall be designated by the city council as the chairman of such committee. The city council may from time to time as occasion may require make new appointments to such committee to fill any vacancy arising therein from death or other cause, and in case any person so appointed neglects or refuses to act, to appoint another in his place.

2. It shall be the duty of such committee personally to inspect any and all lots and parcels of land fronting or abutting upon the work contracted for or benefited thereby as hereinafter set forth and thereupon assess against all such lots and parcels of land, which will in the opinion of such committee be specially benefited by the construction of such system of sewerage, a special assessment in a sum

not exceeding such benefits. Whenever such assessment is made and completed as to all the lots, parts of lots or parcels of land to be benefited by the work under any one contract, the committee shall make or cause to be made a complete list thereof, setting forth the several tracts so assessed and the amount assessed against each, and cause the same to be published once in each week for three consecutive weeks in the official newspaper of the city, together with a notice of the time and place, when and where such committee will meet to hear objections which may be made to any such assessment by any owner or occupant of a tract so assessed, or other person interested in such assessment, or his agent or attorney, and thereupon alter or affirm the same as may in the opinion of the committee be just in the premises. The committee shall then deposit such assessment list with the city auditor who shall forthwith cause the same to be again published once in each week for three consecutive weeks in the official newspaper of the city, with a notice to the persons interested that at the next regular meeting of the city council after the expiration of the time of publication of such notice, giving the date thereof, appeals from the decision of such committee in relation thereto will be heard and determined by the city council; provided, that for any sewer constructed upon petition as provided in section 2315 only the lots abutting on that portion of the street in which such sewer is to be constructed shall be assessed therefor.

3. At such meeting of the city council any person aggrieved by the determination of such committee in regard to any such assessment, and who appeared in person or by his agent or attorney before such committee as hereinbefore provided, if a resident of the city, and all nonresident owners of any property so assessed, whether they appeared before such committee or not, may appear before the city council and present their reasons why the action of such committee should not be affirmed by the city council, and the city council shall then hear and determine such appeals and objections, if any, and may alter or affirm the action of such committee in relation thereto as the city council may deem just in the premises; and shall thereupon cause such list so altered to conform to its action, if any such alteration is made, to be certified as correct by the city auditor and filed in his office. The city auditor in case no bonds shall have been issued to provide funds for the payment of the construction of said system of sewerage or of said sewers shall, at the time he certifies to the county auditor the amount of city taxes to be levied for the current year, also certify to such auditor a list of the lots or tracts of lands assessed for sewer purposes under the provisions of this article, with the whole amount of such assessment, and the county auditor shall extend the same upon the tax roll for the current year and it shall be collected and paid over in the same manner as other city taxes; and when so paid over shall be credited by the city treasurer and auditor to the sewer fund and shall be kept separate and apart from all other funds, and shall be applied to no other purpose whatever than the payment for the construction of the system of sewerage or sewers for which the same was assessed and the city council may direct warrants for such payment to be drawn on such fund to the amount of such assessments before the same are actually collected. In case bonds shall have been issued for the purpose of raising funds to pay for the establishment, construction and maintenance of such system of sewerage or of such sewers, the city auditor shall divide

the total amount of such assessment into as many parts as said bonds have years to run, and shall annually at the time he certifies to the county auditor of such county the amount of city taxes to be levied for the current year, also certify to such auditor a list of the lots or tracts of land assessed for such system of sewerage or such sewers for the payment of which such bonds were issued, with the amount of the part of such assessment to be collected for the current year, and the county auditor shall extend the same upon the tax roll for the current year and collect and pay the same over in the same manner as city taxes.

4. The said committee and the city council upon meeting at the time specified in the printed notices hereinbefore set forth, may adjourn from day to day but not otherwise, until the work of the revision of such list and the determination of said appeals are by them respectively completed, and the chairman of such committee and the presiding officer of the city council shall have power to administer oaths to such witnesses as may be brought before them and the presiding officer of the city council may issue subpoenas for witnesses to testify on behalf of the city, but no appeal shall lie from the decision of the city council to any other tribunal and no objection to any such assessment shall be considered by the city council unless the same objection shall have been first raised before said committee, except in case of nonresidents as hereinbefore provided; provided, however, that this restriction shall not apply to the correction of obvious mistakes or clerical errors.

§ 7, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2321. Special assessment committee. Appointment.

Duties. The city council for the purpose of raising funds to pay for the establishment, construction and maintenance of such system of sewerage or of such sewers, and for the purpose of constructing or purchasing waterworks and for furnishing a supply of water to the inhabitants of such city, shall have power to issue the bonds of the city to an amount not exceeding four per cent upon the assessed value of the taxable property of such city, as determined by the last preceding assessment, payable in not to exceed twenty years from the date thereof, drawing interest semiannually at the rate of not exceeding seven per cent per annum, payable either in New York City or in the city issuing the same, and which shall be signed and executed as provided in article 17 of this chapter; provided, that at no time shall there be bonds outstanding or unpaid in excess of four per cent of the assessed valuation of the taxable property of such city as determined by the last preceding assessment, and such bonds shall not be negotiated at less than par value.

§ 7, art. 16, c. 73,
1887.
§ 1, c. 36, 1893.

§ 2322. Levy and collection of tax. Whenever any such bonds have been issued, the city council shall in each year at the time required by law for the levy of other taxes, levy an annual tax upon all property, real and personal, within the city, upon the basis of the last general assessment of the city, in such amount as may be necessary, together with the proceeds of such special assessment, to provide for the payment of the annual interest on said bonds and to create a sinking fund for the payment of the principal thereof when due, and such tax shall be levied as other city taxes are levied and shall be certified to the county auditor of the county with and in the same manner as other city taxes and shall be collected, enforced and paid over in like manner.

§ 2323. **Sinking fund. Method of investment.** Whenever such bonds shall have been issued the proceeds of the special assessment for the sewers for which such bonds are issued and of such annual tax when paid over to the city treasurer shall be credited by such treasurer and the city auditor to the sewer bond sinking fund. § 7, art. 16, c. 73, 1887.
§ 1, c. 36, 1893.

§ 2324. **Investment of funds.** Whenever there shall be one thousand dollars or more of such funds in the hands of the city treasurer over and above the amount which shall then be needed to pay the interest on said bonds for the then current year, the city council may by a two-thirds vote thereof authorize the investment of the amount in excess of that required for the payment of interest, in such securities as will in the opinion of the city council be safe and readily convertible into cash, and as will secure to said city on the amount to be invested, interest at the rate of not less than five per cent per annum; or by a like vote may authorize the negotiation and redemption before maturity of any of such outstanding bonds on such terms as will in the opinion of the city council best subserve the interests of the city. § 7, art. 16, c. 73, 1887.
§ 1, c. 36, 1893.

§ 2325. **Payment of interest.** Out of the revenue thus to be derived the interest upon said bonds shall be promptly paid when due and the principal thereof at maturity. § 8, art. 16, c. 73, 1887.
§ 1, c. 36, 1893.

§ 2326. **Sewerage, where emptied.** It shall be lawful for any city in this state to empty its sewerage into any river; provided, that where a dam is located within the corporate limits of any city, the sewerage shall in all such cases be emptied below such dam. § 1, c. 37, 1893.

ARTICLE 19. — CORPORATE LIMITS.

§ 2327. **Power to extend city limits.** Any city in this state that shall become incorporated under this chapter may extend its corporate limits in the manner hereinafter provided. § 1, art. 17, c. 73, 1887.

§ 2328. **How.** When a majority of the property owners adjacent to the corporate limits of any city in this state petition the mayor and city council to have any of their property included within the corporate limits of said city, it shall be the duty of the city council to publish such petition in the official paper of the city for four consecutive weeks, and unless a written protest signed by at least twenty-five property owners of said city is filed with the mayor opposing such proposed annexation, within ten days after the publication of said petition, such proposed annexation shall be included in and become a part of said city. § 2, art. 17, c. 73, 1887.

§ 2329. **Plat of city to be recorded.** The mayor of any city incorporated under this chapter shall 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 his city at the time of its incorporation under this chapter, and any change in said city limits made subsequent to its incorporation under this chapter. § 3, art. 17, c. 73, 1887.

§ 2330. **Extension of limits.** Any city in the state having not less than three thousand inhabitants may so extend its boundaries as to increase the territory within the corporate limits, not to exceed one-fourth its present 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. § 1, c. 32, 1889.

§ 2. c. 32, 1889. **§ 2331. Publication of resolution.** The resolution of the city council shall be published in the official newspaper of the city for three successive weeks, and unless a written protest signed by a majority of the property owners of said proposed extension is filed with the city clerk or 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 said city.

§ 3. c. 32, 1889. **§ 2332. Plat filed.** When the city limits of any city have been extended, as provided by the last two sections, 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 20. — MISCELLANEOUS.

§ 1. art. 18, c. 73, 1887. **§ 2333. Power to enforce charter by ordinance.** When by this chapter 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.

§ 2. art. 18, c. 73, 1887. **§ 2334. Power of council to define additional duties for city officers.** The duties, powers and privileges of all officers of every character in any way connected with the city government, not herein defined, shall be defined by the city council and the defining by this chapter 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 officer.

§ 3. art. 18, c. 73, 1887. **§ 2335. Property of city exempt from taxation and sale on execution.** Lands, houses, moneys, debts due the city and property and assets of every kind and description belonging to the city shall be exempt from taxation and sale on execution.

§ 4. art. 18, c. 73, 1887. **§ 2336. Fines, penalties and forfeitures.** 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 entitled by law to receive the same.

§ 5. art. 18, c. 73, 1887. **§ 2337. Penalty for being interested in contract.** 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 any sum not exceeding one thousand dollars, one-half of which shall go to the informer and the balance be paid into the city treasury by the officer collecting or receiving the same, and the said contract shall be null and void.

ARTICLE 21. — HOW TOWNS AND VILLAGES MAY BECOME CITIES.

§ 1. art. 19, c. 73, 1887.
§ 1. c. 66, 1889.
am'd. **§ 2338. Towns may become cities, when.** Any incorporated town or village in this state, having a population of not less than five hundred inhabitants, may become incorporated as a city in like manner as in this chapter provided. But in all such cases the president and trustees, and all other officers of such town or village

shall respectively perform the same duties relative to such change of organization as is required to be performed by the mayor, council and other officers of cities until the succeeding city election.

§ 2339. Petition. Election. Return. Whenever any area of contiguous territory in this state not exceeding four square miles shall have residing 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 manner following: Any fifty legal voters thereof may file in the office of the county auditor of the county in which such 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 the greater part of such territory is situated, which petition shall define the boundaries of such proposed city and state the number of inhabitants residing within 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 as a city under this chapter. It shall be the duty of the board 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 2110 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 of such territory described in such petition shall be deemed to be incorporated as a city under this chapter, and with the name stated in the petition. § 2, art. 19, c. 73, 1887.

§ 2340. Election of officers. It shall be the duty of the president and board of trustees of any town or village which shall have voted to change its organization to a city under this chapter, 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 is one within the town or village, or posted in ten public places for at least twenty days before such election. Such president and trustees shall appoint the judges to hold such election, canvass returns thereof, and cause the result to be entered upon the records of the town or village; and the provisions of this chapter relative to the election of city officers shall be applicable thereto; but at such election aldermen may be elected on a general ticket. § 3, art. 19, c. 73, 1887.

§ 2341. When county commissioners to give notice of election, etc. In case of cities organizing under section 2339 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 the president and trustees of such towns and villages. § 4, art. 19, c. 73, 1887, am'd.

§ 2342. Term of first officers. The city officers elected under either of the preceding sections shall hold their respective offices until the succeeding regular election for such officers respectively, and until their successors are elected and qualified as provided in this chapter. § 5, art. 19, c. 73, 1887.

§ 6, art. 19, c. 73.
1887.

§ 2343. Special charter null and void, when. Whenever any city in this state shall organize under this chapter any special charter that may have been granted to such city shall be null and void.

CHAPTER 29.

VILLAGES.

ARTICLE 1.—INCORPORATION OF VILLAGES.

§ 1, c. 24, Pol. C.
am'd.

§ 2344. Townsite to be surveyed and platted. Persons intending to make application for the incorporation of a village 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 village; 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.

§ 2, c. 24, Pol. C.

§ 2345. 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.

§ 3, c. 24, Pol. C.

§ 2346. Survey, map and census subject to examination. 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.

§ 4, c. 24, Pol. C.

§ 2347. 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 such census; and such 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.

§ 5, c. 24, Pol. C.
am'd.

§ 2348. Commissioners to make order of incorporation. 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 2346; and if the board is satisfied that the requirements of this chapter have been fully complied with, it shall then make an order declaring that such territory shall with the assent of the qualified voters thereof as hereinafter provided be an incorporated village by

the name specified in the application aforesaid, which name shall be different from that of every other town in this state, and it shall also include in such order a notice for a meeting of the qualified voters resident in said proposed village at a convenient place therein to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated village.

§ 2349. **Notice of meeting to be given.** The board shall cause ten days' notice to be given of such meeting by publication in a newspaper if one is published in the county, and by posting up not less than ten copies of such notice in the most public places in said proposed incorporated village. § 6, c. 24, Pol. C. am'd.

§ 2350. **Opening of polls.** At the meeting of the qualified voters as herein provided the 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. § 7, c. 24, Pol. C.

§ 2351. **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 polls are now opened and that they are ready to receive the ballots of the voters. § 8, c. 24, Pol. C.

§ 2352. **Manner of voting.** The qualified voters of said proposed incorporated village shall vote by ballot, having thereon the words "for incorporation, yes," or the words "for incorporation, no;" and if a majority of the votes given at such meeting shall have thereon the word "no," the voters of such proposed village shall be deemed not to have assented to the incorporation thereof as a village and no further proceedings shall be had in reference thereto; but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated village and shall thereafter, for all purposes except the payment of any prior bonded indebtedness, be separate and disconnected from any civil township of which it theretofore formed a part and 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 election shall 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, which statement shall be verified by the affidavit of such inspectors and shall be returned to the board of county commissioners at its next session, which, if satisfied of the legality of such election, shall make an order declaring that said village has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of such corporation by the name and style aforesaid shall thereafter be judicially taken notice of in all courts in this state without specially pleading or alleging the same. § 9, c. 24, Pol. C. 1, c. 129, 1893. am'd.

§ 2353. **Division of village into districts.** Such inspectors when they shall have returned the statement as aforesaid shall next proceed to divide said village 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 districts. § 10, c. 24, Pol. C. am'd.

§ 2354. **Notice of election.** They shall also give ten days' notice by publication in a newspaper if one is published in such village and by posting such notices in five public places therein, of an § 11, c. 24, Pol. C. am'd.

election to be held in such village for the purpose of electing officers thereof, naming the place therein and the day upon which the same will be held, but the day named shall be within twenty days from the posting of such notices. Notice of each subsequent election shall be given in like manner by the clerk of said village.

§ 12, c.24, Pol.C.
am'd.

§ 2355. Annual election, when held. An election for officers of said village 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.

§ 13, c.24, Pol.C.
am'd.

§ 2356. How long polls shall remain open. At all elections in said village 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.

§ 14, c.24, Pol.C.

§ 2357. Inspectors to be judges of election. 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.

§ 15, c.24, Pol.C.
am'd.

§ 2358. What village officers to be elected. There shall be elected at the first and at each subsequent election one trustee from each district in said village, and also a clerk, assessor, treasurer, marshal and justice of the peace, 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.

§ 16, c.24, Pol.C.
am'd.

§ 2359. Highest number of votes elects. Duty of inspectors. The persons receiving the highest number of votes for the offices of trustee shall be declared elected as such trustees, and the persons receiving 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 elected; and if two or more shall receive an equal and the highest number of votes, and there is no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall further be the duty of such inspectors to make a certified statement over their own signatures, of the persons elected to fill the several offices in said village, and file the same with the county auditor of the county 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.

§ 17, c.24, Pol.C.

§ 2360. County auditor to make record of statement. It shall be the duty of the county auditor 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.

§ 18, c.24, Pol.C.

§ 2361. Vacancy in board of trustees, 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 is appointed, and shall in no case extend beyond the annual election provided for in this chapter.

§ 19, c.24, Pol.C.

§ 2362. Oath of officers. The board of trustees chosen as aforesaid shall elect a president from its 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.

§ 2363. **Board of trustees a body corporate.** The president and trustees of such village and their successors in office shall constitute a body politic and corporate, by the name of the "village of," and may prosecute and defend suits to which they are a party. § 20, c. 24, Pol. C. am'd.

§ 2364. **Notice of special meetings.** Special meetings of the qualified voters may be called by the clerk by order of the trustees of said village, by giving ten days' notice thereof in a newspaper if any is printed in such village, otherwise by posting up such notices in five public places therein, and such notice shall state the object for which each meeting is called. § 21, c. 24, Pol. C. am'd.

ARTICLE 2. — POWERS OF THE BOARD OF TRUSTEES.

§ 2365. **General powers.** The board of trustees shall have the following powers: § 22, c. 24, Pol. C. § 1, c. 106, 1887. am'd.

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 chapter.
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 village, and the 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 it, entered upon the proper book of the board, visit, or appoint one or more firewardens, 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 stovepipes; to prevent out-fires and the use of fireworks and the discharge of fire-arms within the limits of said corporation or such parts thereof as it may think proper; to compel the inhabitants of such village to aid in the extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this chapter provided; to construct and preserve reservoirs, wells, pumps, and other waterworks, and to regulate the use thereof, and generally to establish other measures of prudence, for the prevention or extinguishment of fires as it 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 it shall deem necessary.

5. To restrain from running at large cattle, swine or other 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.

10. To appoint street commissioners and also firewardens, not exceeding three.

11. To prohibit the incumbrance of the sidewalks of said village, and riding or driving thereon except to cross the same.

12. To provide means for keeping and preserving the peace and quietness of such village.

13. To insure the public property of such village.

14. To purchase, lay out and regulate cemeteries.

15. To plant trees upon public grounds and along the streets of such village and provide for their culture and preservation, and to inclose any public square or other public grounds within said corporation.

16. To levy and collect annual taxes not exceeding fifty cents on the hundred dollars valuation, and twenty-five cents poll tax on all property subject by law to taxation.

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 village.

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 chapter, and to repeal, alter or amend the same as they shall seem to the board of trustees of such village to require; but every by-law, ordinance or regulation unless in case of emergency shall be published in a newspaper in such village if one is printed therein, or posted in five public places at least ten days before the same shall take effect.

19. To prescribe fines, penalties and forfeitures for violations of this chapter or of any by-law or ordinance by it 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.

§ 23, c.24, Pol.C.
am'd.

§ 2366. Jurisdiction of trustees over public grounds. The trustees shall have jurisdiction over any commons or public grounds belonging to said village 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 stream 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 section.

ARTICLE 3. — AUDITING AND PAYMENT OF ACCOUNTS.

§ 2367. **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 chapter. 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. § 24, c.24, Pol.C.

§ 2368. **Accounts must be audited.** No account or claim against said village shall be audited or allowed by the board of trustees unless it is 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. § 25, c.24, Pol.C. am'd.

§ 2369. **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 village and attested by the clerk thereof. § 26, c.24, Pol.C. am'd.

ARTICLE 4. — CORPORATE INDEBTEDNESS.

§ 2370. **Contracting loans.** No village incorporated under this chapter 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 village as evidenced 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. § 27, c.24, Pol.C. am'd.

ARTICLE 5. — QUALIFICATION OF OFFICERS.

§ 2371. **Certain officers to give bonds.** The clerk, assessor, treasurer, marshal and justice of the peace shall within ten days after their election or appointment each give a bond payable to the village with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year. § 28, c.24, Pol.C.

§ 2372. **Books, etc., to be delivered to successor.** All books, vouchers, moneys or other property belonging to the corporation and in the charge or possession of an officer of the same shall be delivered to his successor when qualified. § 29, c.24, Pol.C.

ARTICLE 6. — LEVY AND COLLECTION OF TAXES.

§ 30, c.24, Pol.C. **§ 2373. Board determines amount of tax.** The board of trustees shall before the third Tuesday in May of each year determine the amount of general tax for the current year.

§ 31, c.24, Pol.C.
am'd. **§ 2374. Duties of assessor.** The assessor shall assess all property liable to taxation in such village under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board on or before the second Tuesday of June of each year.

§ 32, c.24, Pol.C.
am'd. **§ 2375. Notice of opening of assessment roll.** The trustees shall cause the clerk of said corporation to put up notices in three or more public places in said village stating that the assessment roll is returned and open for inspection, and that on a day and at a place to be specified in said notice the trustees will hear and decide all complaints of and appeals from the acts of said assessor.

§ 33, c.24, Pol.C.
am'd. **§ 2376. Duty of trustees after correction of tax list.** When the assessment roll shall have been corrected and completed the trustees shall levy a tax upon the taxable property of said village to such an amount as they may deem necessary, and shall set opposite the name of each person taxed a description and valuation of the property charged therewith and the amount of tax assessed against such person; and when such tax list shall have been made they shall cause a copy thereof with a warrant annexed to be delivered to the marshal of such village. The assessment roll and tax list shall be deposited with the treasurer of such village, who is hereby charged with the safe custody of the same.

§ 34, c.24, Pol.C.
am'd. **§ 2377. Warrant to marshal to collect and pay over taxes.** Such warrant shall be under the seal of the corporation, signed by the president and trustees or a majority of them and attested by the clerk, and shall command the marshal to collect the taxes specified in his duplicate within ninety days and pay over the same and make return of said warrant to the treasurer of said village. Such trustees may renew such warrant for any period not exceeding thirty days.

§ 35, c.24, Pol.C. **§ 2378. Powers of marshal to collect tax.** The marshal shall collect the taxes on said duplicate when so required, and shall have the same power to enforce collections and shall be governed by the same rules and regulations as county treasurers and collectors, and shall have authority in like manner to collect by distress and sale of personal property; but if the tax cannot be so made and it becomes necessary to sell real estate such tax shall be certified to the county treasurer, who shall proceed to collect the same as directed by the law governing tax sales; provided, that this shall not apply to incorporated cities, villages or towns for which a different method is provided by their charters.

§ 36, c.24, Pol.C.
am'd. **§ 2379. Tax duplicate may be delivered to county collector.** The trustees of such village may at their option in the first instance deliver the tax duplicate to the collector of the proper county on or before the first day of August in each year, instead of the marshal of such village, and said collector shall enter said tax and, if delinquent, the interest and penalty thereon upon his duplicate.

§ 37, c.24, Pol.C. **§ 2380. Compensation of county and town treasurer.** The treasurer of such county shall collect the corporation taxes upon such

duplicate as other taxes are collected, and pay the same over to the treasurer of such corporation. The treasurer shall be allowed and paid by the corporation the same compensation as is paid by the county for like services.

§ 2381. **Special taxes assessed to be a lien.** All taxes assessed by the board of trustees of villages incorporated under the provisions of this chapter for the grading, paving or otherwise improving the streets of the village, or for building or repairing sidewalks, 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. § 58, c.24, Pol.C. am'd.

§ 2382. **Special taxes, how collectible. Penalty for delinquency.** 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, as may 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 cent and shall bear interest from the day of sale at the rate of twenty-five per cent per annum, to be computed on the tax, penalty and costs of sale. § 59, c.24, Pol.C.

§ 2383. **What costs may be included in special tax.** 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 village. § 60, c.24, Pol.C. am'd.

§ 2384. **Marshal's duty in relation to special taxes.** When the special tax is levied it shall be the duty of the marshal of such village to calculate the amount of tax on each block, lot or piece of ground, and file a statement thereof with the village 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 marshal, and he shall keep a record of all such warrants and enter on the margin of such records all amounts paid and by whom paid. § 61, c.24, Pol.C. am'd.

ARTICLE 7. — POWERS AND DUTIES OF OFFICERS.

§ 2385. **Duties of village treasurer.** The treasurer of each incorporated village 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 chapter 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 its 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 a settlement with said treasurer. § 38, c.24, Pol.C. am'd.

- § 39, c.24, Pol.C. **§ 2386. Board of trustees to publish receipts and expenditures.** 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 is published therein, or if there is 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.
- § 40, c.24, Pol.C.
am'd. **§ 2387. Duties of clerk.** The clerk of such village shall have the custody of the records, books and papers of the board of trustees and shall attend all meetings and keep a record of the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws.
- § 41, c.24, Pol.C.
am'd. **§ 2388. Powers of marshal.** The marshal of such village 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 village.
- § 42, c.24, Pol.C. **§ 2389. Trustees to superintend grading, etc.** The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of sidewalks.
- § 43, c.24, Pol.C. **§ 2390. Firewardens, duties of.** The firewardens 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 firewardens.
- § 44, c.24, Pol.C.
am'd. **§ 2391. Compensation of village 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 the board shall cause other officers of such village to be paid for their services a just and reasonable compensation.

ARTICLE 8. — SIDEWALKS AND STREETS.

- § 1. c. 107, 1882. **§ 2392. Sidewalks, streets, etc. Petition for building or repairing.** 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 the real estate, 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 shall be taxed as aforesaid for sidewalks built or improvements done at a greater distance from the front of said real estate than one-half the distance to the opposite side of said street.
- § 46, c.24, Pol.C.
am'd. **§ 2393. No one exempt from highway tax.** Nothing contained in this article shall exempt the inhabitants of any village from the payment of highway taxes legally assessed, nor from the forma-

tion of one or more road districts irrespective of the corporate limits of such village.

ARTICLE 9.—EXTENSION OF CORPORATE LIMITS.

§ 2394. **Addition to corporation.** When two-thirds of the owners of a tier of out-lots adjoining an incorporated village shall sign a petition asking that the corporate limits of said village be extended so as to include said out-lots, the board of trustees of said village 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. § 47, c.24, Pol.C. am'd.

§ 2395. **Annexing additional lots.** Whenever there shall be lots laid off and platted adjoining such village, 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 village so as to include such lots; and the lots thus annexed shall thereafter form a part of such village 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 of deeds. § 48, c.24, Pol.C. am'd.

§ 2396. **Proceedings of trustees to annex additions.** When any village shall desire to annex contiguous territory thereto not platted 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 village, if any, otherwise in the county, and if there is none in the county then by posting up such notice in five or more public places within the village; a copy of such notice shall be served upon the owner of such territory if known and is a resident of the county. § 49, c.24, Pol.C. am'd.

§ 2397. **County commissioners to hear and order annexation.** 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. § 50, c.24, Pol.C.

ARTICLE 10.—DISSOLUTION OF CORPORATION.

§ 2398. **Petition for election, etc.** When an application signed by one-third of the legal voters of any incorporated village 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 the board if it deems the reasons good to call a § 51, c.24, Pol.C. am'd.

meeting of the voters of such village by giving ten days' notice thereof as provided in this chapter, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting and the polls shall be opened as at other elections, 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 village, a statement of the vote signed by the president and attested by the clerk shall be filed in the office of the register of deeds of the county, and such village 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 village at any special meeting thereof may direct.

§ 52, c.24, Pol.C.

§ 2399. Dissolution not to affect contracts. No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

ARTICLE 11. — MISCELLANEOUS.

§ 53, c.24, Pol.C.
am'd.

§ 2400. Proof of compliance with law by village. Whenever any suit shall be instituted by an incorporated village it shall not be required to show its compliance with any of the provisions of this chapter as to its organization or publication of by-laws or ordinances, unless the same is controverted under oath.

§ 54, c.24, Pol.C.
am'd.

§ 2401. Towns and villages may adopt this chapter. Any town or village heretofore incorporated may by resolution of the board of trustees or other municipal board thereof entered upon the record book of the corporation become incorporated under this chapter, 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 or villages by whatever name designated, performing duties of a like nature to those required of officers, created by this chapter shall continue to be the officers of such towns or villages, under the names specified in this chapter, until their successors are elected and qualified.

§ 55, c.24, Pol.C.
am'd.

§ 2402. When debt not nullified. No debt or liability due to or from any incorporated town or village shall be unpaid by reason of such town or village being brought within the provisions of this chapter and becoming incorporated under it.

ARTICLE 12. — PROCEDURE IN VILLAGE JUSTICE'S COURT.

§ 1, c. 134, 1881.
am'd.

§ 2403. Village justice, jurisdiction of. Justices of the peace of any village organized under the provisions of this chapter shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such village, and concurrent jurisdiction with all other justices in all civil actions and in all criminal actions for offenses against the laws of the state, committed within the county where such village is situated.

§ 1, c. 134, 1881.

§ 2404. Procedure in, how governed. Whenever complaint shall be made to the justice of the peace of such village, 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 village, the sheriff or any constable of the county, or any person specially appointed by the justice for that 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 justices' code.

§ 2405. Duty of justice when defendant appears. When any person shall be brought before such justice of the peace upon a warrant it shall be his duty to hear and determine the complaint alleged against him. § 63, c.24, Pol.C.

§ 2406. Proceedings when trial is postponed. Upon good cause shown such justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into an undertaking with sufficient surety conditioned that he will appear before such justice at the time and place appointed, then and there to answer the complaint alleged against him. § 64, c.24, Pol.C.

§ 2407. Justice to summon witnesses. It shall be the duty of such justice 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 he may verbally notify such witnesses as may be present to attend before him at the time to which the action is continued, to testify therein, and such verbal notice shall be as valid as a summons. § 65, c.24, Pol.C.

§ 2408. Trials, how governed. All trials before such justice shall be governed by the criminal procedure applicable to justices' courts. § 66, c.24, Pol.C.

§ 2409. Judgment when defendant found guilty. In all trials for offenses under the ordinances of the village, if the defendant is found guilty the justice shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment is satisfied, in no case to exceed one day for every seventy-five cents of the fine and costs assessed against such defendant. § 67, c.24, Pol.C.
am'd.

§ 2410. Justice is peace officer. Court open every day. Such justice 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 persons forthwith before him for trial. No act shall be performed by him on Sunday except to receive complaints, issue process and take bail. § 68, c.24, Pol.C.

§ 2411. Appeals. In all cases before such justice an appeal may be taken by the defendant to the district court of the county in which such village is situated; but no appeal shall be allowed unless such defendant shall within ten days enter into an undertaking with sufficient sureties to be approved by such justice, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof in case such appeal is determined against him. § 69, c.24, Pol.C.
am'd.

§ 2412. Punishment for violation of ordinances. Any person convicted before such justice of an offense against the § 70, c.24, Pol.C.
am'd.

ordinances of the village shall be punished by fine as may be regulated by ordinance.

§ 71, c.24, Pol.C.
am'd.

§ 2413. **Power of justice. Jury. Appeals.** The justice of the peace of the village 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 court or to process issued or orders made by him, in the same manner and to the same extent as provided for courts of justices of the peace. From any final conviction, sentence or judgment of said court an appeal may be taken to the district court within the time and in the manner prescribed for taking appeals from justices' courts and the district court shall on such appeals take judicial notice of all the ordinances of such village. Actions before such justices of the peace, arising under village ordinances, shall be tried and determined by such justices of the peace without the intervention of a jury unless the defendant demands a trial by jury; and when a demand shall be so made the trial shall be by jury of twelve citizens of such village having the qualifications of jurors, who shall be summoned by the marshal 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; the remaining twelve names shall constitute a jury for the trial of an action. If there is any challenge for cause such justice of the peace shall try the question in a summary manner, and he may examine the challenged jurors under oath.

§ 72, c.24, Pol.C.

§ 2414. **Fees of jurors.** Such jurors shall each be paid fifty cents for their services in each action.

§ 73, c.24, Pol.C.

§ 2415. **Costs of jury taxed to defendant, when.** 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 action and the amount thereof shall be a part of the judgment.

§ 74, c.24, Pol.C.

§ 2416. **Proceedings, how governed.** In all actions not herein specially 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 actions.

ARTICLE 13. — ORDINANCES.

§ 57, c.24, Pol.C.
am'd.

§ 2417. **How ordinances may be proven.** All ordinances of the village may be proven by the ordinance book or the certificate of the clerk of the village under the seal of the village; and when printed in a newspaper or published in book or pamphlet form and purporting to be published or printed by authority of the village, may be read and received in all courts and places without further proof.

CHAPTER 30.

MISCELLANEOUS PROVISIONS RELATING TO CITIES AND VILLAGES.

ARTICLE 1.—TOWN PLATS.

§ 2418. **Survey and plat to be 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. § 1. c. 28, Pol. C.

§ 2419. **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. § 1. c. 106, 1887.

§ 2420. **Base line, how formed.** The proprietor of the town, addition or subdivision of out-lots, by himself or agent, shall at the time of surveying and laying the same out 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. § 3. c. 28, Pol. C.

§ 2421. **Plat to be certified and acknowledged.** The plat or map after having been completed shall be certified by the surveyor and the officers; and every person whose duty it shall be to comply with the foregoing requirements shall at or before the time of offering said plat or map for record acknowledge the same before some person authorized to take acknowledgments. 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. § 4. c. 28, Pol. C.

§ 2422. **Lands donated or granted. 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 to any individual, religious society, or corporation, marked or noted as such on said plat or map, shall be deemed a sufficient conveyance to vest the fee simple of such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donors, their heirs or representatives, to said donees, or grantees, for 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, 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. § 5. c. 28, Pol. C.

- § 6, c. 26, Pol. C. **§ 2423. Record of plat in unorganized counties.** If the county in which said town or addition is situated shall not be organized, the plat or map shall be recorded in the office of the register of deeds of the county to which such county is at the time attached for judicial purposes.
- § 7, c. 26, Pol. C. **§ 2424. Towns already laid out must comply with this chapter.** 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 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 chapter; 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 conveniently changed they shall be returned as originally stated; but in all other respects the plat or map shall conform to the requirements of this chapter.
- § 8, c. 26, Pol. C. **§ 2425. Fees of 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.
- § 9, c. 26, Pol. C. **§ 2426. Penalty if sale or lease is offered before compliance with this act.** If any person or persons shall dispose of, offer for sale or lease for any time any out or in-lots in any town, village or city or in any addition to any town, village or city or any part thereof, which shall hereafter be laid out, until all the foregoing requirements of this chapter 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.
- § 10, c. 26, Pol. C. **§ 2427. Penalty if officer or other persons neglect to do duty.** If any officer or person whose duty it is to comply with any of the requirements of this article shall neglect or refuse so to do, he shall forfeit and pay a sum not less than ten nor more than one hundred dollars for each month he shall delay a compliance.
- § 12, c. 26, Pol. C. **§ 2428. Forfeitures and liabilities.** All forfeitures and liabilities which may be incurred or arise under this chapter shall be prosecuted for and recovered in the name of the county treasurer; and any officer paying over any money to such treasurer, received under any of the provisions of this chapter, shall take his receipt therefor and forthwith file such receipt with the county auditor, and he shall charge the amount of such receipt against said treasurer on the books of the county.

ARTICLE 2. — VACATION OF PLATS BY DISTRICT COURT.

- § 13, c. 26, Pol. C. **§ 2429. District court may alter or vacate towns.** The district court is authorized and empowered on application made by

the proprietors of any town within the county to alter or vacate the same or any part thereof.

§ 2430. **Notice of application, how given.** If any proprietor of a town shall be desirous of altering or vacating the same or any part thereof, such proprietor 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 is one, at least forty days prior to the sitting of the court to which he intends to make such application. § 14, c. 26, Pol.C.

§ 2431. **Proceedings for.** If such applicant shall produce to the court satisfactory evidence that the notice required by the preceding section has been given, the court shall proceed to hear and determine such petition, and may alter or vacate such town or any part thereof, and order the proceedings thereon to be recorded by the clerk with the records of the court. § 15, c. 26, Pol.C.

ARTICLE 3. — VACATION OF PLATS BY WRITTEN DECLARATION.

§ 2432. **Plats, how vacated.** Any plat of any town, village 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 article 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. § 1, c. 109, 1887.

§ 2433. **Part of plat vacated, how.** Any part of a plat may be vacated under the provisions and subject to the conditions of this article; 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. § 2, c. 109, 1887.

§ 2434. **Proprietors' rights when 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. § 3, c. 109, 1887.

§ 2435. **Register of deeds to mark plat.** 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 such instrument of vacation is recorded. § 4, c. 109, 1887.

§ 2436. **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 § 5, c. 109, 1887.

county surveyor, and when such plat is acknowledged by such owner and recorded in the office of the register of deeds such lots may be conveyed and assessed by the numbers given them on such plat.

ARTICLE 4. — CHANGING LIMITS OF CITIES, TOWNS AND VILLAGES.

§ 1, c. 104, 1887.
am'd.

§ 2437. 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 or village and not embraced within the limits thereof, the city council of the city or the board of trustees of the town or village, as the case may be, may by ordinance annex such territory to such city, town or village 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 or village 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.

§ 2, c. 104, 1887.
am'd.

§ 2438. Limits may be 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, town or village, and being upon the border and within the limits thereof, the city council of the city or the board of trustees of the town or village, as the case may be, may disconnect and exclude such territory from such city, town or village; provided, that the provisions of this section shall only apply to lands not laid out into city, town or village lots or blocks.

§ 3, c. 104, 1887.
am'd.

§ 2439. Notice of petition to be published. 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 the last two sections 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, town or village where the petition is presented; or if no newspaper is published therein, then in the newspaper published nearest thereto.

§ 4, c. 104, 1887.
am'd.

§ 2440. Petition presented to district court, when. Upon the failure of the city council, or the board of trustees, as the case may be, to grant the request contained in any petition presented in accordance with the provisions of sections 2437 and 2438, for thirty days after the last publication of the notice provided for in the last section, or upon a refusal to grant such request, the petitioners may present their petition to the district court of the county in which such city, town or village 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, as the case may be, together with a notice of the time and place when and where a hearing will 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.

§ 5, c. 104, 1887.

§ 2441. 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.

§ 2442. Map to be filed. When any territory is annexed by ordinance or by order of court to any city, town or village as provided in this article, it shall be the duty of the mayor of the city or of the president of the board of trustees of the town or village, 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 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, town or village a copy of the ordinance or judgment therefor shall be so filed and recorded, at the expense of the petitioners therefor. § 6, c. 104, 1887. am'd.

ARTICLE 5. — CHANGING NAMES OF TOWNS OR VILLAGES.

§ 2443. 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 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. § 1, c. 31, 1885.

§ 2444. Notice. Notice of the filing of such 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. § 2, c. 31, 1885.

§ 2445. Duty of county commissioners. At the next regular meeting of the board after such notice shall have been posted as aforesaid, the board shall proceed to hear and determine the petition unless the hearing is for good cause continued until the next meeting; and the 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 board that two-thirds of the qualified electors of the town or village in good faith signed said petition for change of name and desired the same, then the board shall order said name to be changed as prayed for. § 3, c. 31, 1885.

§ 2446. Record. The order of the board shall thereupon be entered of record, giving the name of the town or village as set forth in such 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 the county, if any, and if there is no newspaper published in the county, then such notice shall be published by posting the same for four weeks on the front door of the courthouse in which the last term of the district court of said county was held. § 4, c. 31, 1885.

§ 2447. Proof of publication to be filed. Proof of such publication shall be filed in the office of the county auditor; 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 § 5, c. 31, 1885.

under the provisions of this article the 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.

§ 6, c. 31, 1885.

§ 2448. Costs. In all cases arising under the provisions of this article 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.

ARTICLE 6. — CHANGING WARDS.

§ 1, c. 110, 1887.

§ 2449. Petition. Notice. When a petition shall be presented to the mayor and council of any city or the president and trustees of any town or village, signed by a majority of the legal voters thereof, 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 city, town or village, the council of such corporation shall at once cause to be published in a weekly newspaper of the city or village in at least three issues a notice of the day, hour and place of meeting at which they will consider such petition.

§ 2, c. 110, 1887.

§ 2450. Council may order change, when. If it shall appear to the council or trustees that the change petitioned for is desirable and for the best interests of the city, town or village 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.

§ 3, c. 110, 1887.

§ 2451. Plats and records to be changed. The council shall direct the corporation attorney to cause such needful changes in papers, plats and matters of record as the change may demand.

§ 4, c. 110, 1887.

§ 2452. Duty of clerk. It shall be the duty of the town, village or city clerk or auditor to make such changes in assessment lists as the change in wards necessitates.

§ 5, c. 110, 1887.

§ 2453. Manner of holding 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 and clerks, and make all necessary provisions for holding the election in the new ward or wards, naming the several officers to be chosen.

ARTICLE 7. — LOCATING AND VACATING STREETS AND ALLEYS.

§ 1, c. 111, 1887.

§ 2454. Power to open, improve and vacate streets and alleys. Any city, town or village is 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.

§ 1, c. 107, 1887.

§ 2455. Petition. Whenever a majority of the resident owners of real estate situated in any block or subdivision of any city, town or village in the state 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, 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 describing the proposed location of the proposed alleyway.

§ 2456. Commission to appraise damages. Upon the presentation to him of such 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. § 2, c. 107, 1887.

§ 2457. Damages and costs assessed against property. 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 such location is granted by the court said damages and all costs of the proceedings 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 auditor of the county, 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. § 3, c. 107, 1887.

§ 2458. Notice to be posted, when. If no paper is published in such city, town or village, then the notice required in section 2455 to be published may be posted in three public places within such city, town or village for the period of thirty days, in lieu of such publication.

ARTICLE 8.—WATERWORKS AND FIRE APPARATUS.

§ 2459. Power of municipalities to provide. All cities, towns and villages in this state having a population of one thousand inhabitants or more are authorized and empowered to purchase, erect, lease, rent, manage and maintain any system or part of system of waterworks, hydrants and supply of water, telegraph fire signals or fire apparatus that may be of use in the prevention and extinguishment of fires; and to pass such ordinances penal or otherwise as may be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected. The city council or board of trustees of such city or municipal corporation is authorized and empowered 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; provided, 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 § 1, c. 106, 1887.

or municipal corporation at a general or special election and ratified by a majority of the voters of said city or municipal corporation voting at such election.

§ 2, c. 105, 1887.
am'd.

§ 2460. How construed. The last section shall not be construed to modify or affect the power of any city, town or village or the power of the city council or board of trustees thereof as authorized and granted by the charters of such cities, towns or villages or the laws under which they were incorporated, where said charter or law shall have expressly given to such municipality the power to lease rent or maintain such property.

§ 1, c. 134, 1893.

§ 2461. Election to determine sale. When any city, town or village shall own the waterworks system of such city, town or village, neither the city council nor the authorities of any such city, town or village shall have authority to sell or dispose of such waterworks system, mains, pumping stations or any part thereof, unless the proposition to sell the same shall first have been submitted to the legal voters of such city, town or village at a special election called for that purpose, and such sale shall have been authorized by a majority vote of all the votes cast at such election; provided, that nothing herein shall prevent the city council of any city from selling or disposing of any machinery, material or other property belonging to any such system which may have become inadequate or insufficient for the purpose for which the same was intended to be used.

ARTICLE 9.—INSURANCE TAX FOR FIRE DEPARTMENTS.

§ 1, c. 53, 1887.

§ 2462. Duty of clerk. The clerk of each city, town or village in this state having an organized fire department shall on or before the thirty-first day of October in each year make and file with the state auditor 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.

§ 2, c. 53, 1887.

§ 2463. State auditor to furnish blanks. Insurance companies to make statement. 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 article, 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.

§ 3, c. 53, 1887.
§ 1, c. 66, 1893.

§ 2464. State auditor to issue warrants. The state 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 of this article his warrant upon the state treasurer for an amount equal to two per cent 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 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 com-

panies, 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 2462, and having the management of at least one steam, hand or 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; provided, that in cities, towns and villages having a paid fire department, the amount so received by the city, town or village treasurer shall be placed in a fund to be disbursed by the city council, trustees or other governing body of such city, town or village in maintaining such fire department.

§ 2465. Qualification of fire department. No city, town or village shall be entitled to any of the benefits arising from this article unless the fire department shall have been in actual existence eight months prior to the filing of the certificate required by section 2462, 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. § 4, c. 53, 1887.

§ 2466. Failure to file certificate a waiver. If the certificate required by section 2462 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. § 5, c. 53, 1887.

ARTICLE 10. — FREE LIBRARIES.

§ 2467. Library fund, how provided. The city council of each 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 receiving the approval of a majority of the electors of such city, village or township, voting on such question at any general election at which it may be submitted to a vote. § 1, c. 56, 1887.

§ 2468. Library managed by board of directors. 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 them- § 2, c. 56, 1887.

selves at their first meeting by lot into two classes, and two of such directors shall hold for one year and the remaining three for two years, 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.

§ 3, c. 56, 1887.

§ 2469. Duties and powers of board. 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 article. They shall have the exclusive control of the expenditures of all moneys collected for or contributed to 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 vouchers 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 one-half of the income in any one year.

§ 4, c. 56, 1887.

§ 2470. Library free under rules established by board. 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 the board may exclude from the use of said library and reading room any and all persons who shall willfully violate such rules.

§ 5, c. 56, 1887.

§ 2471. Board to make annual report. The board of directors shall make an annual report to the said board of education or school board or board of supervisors stating the condition of the library and property, 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 the library, with such other statistics, information and suggestions as they may deem of general interest.

§ 6, c. 56, 1887.

§ 2472. Donations, how and to whom made. 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.

§ 7, c. 56, 1887.

§ 2473. City council or trustees to appropriate funds, when. To aid and facilitate the organization of a library in any city, village or township as in this article provided, where the same is re-

quired 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 code 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 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 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 existing 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 2467.

ARTICLE 11. — BONDS OF MUNICIPAL CORPORATIONS.

§ 2474. Bonded indebtedness, for what incurred. Limit of. Any city or municipal corporation in 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 waterworks, sinking public wells or cisterns and putting in sewers and improving streets, which said indebtedness, together with the indebtedness which then exists shall not, except as otherwise provided, exceed five per cent of the assessed valuation of the taxable property in such city or municipal corporation as shown by the return of the assessor for the year next preceding the time at which such indebtedness shall be incurred.

§ 1. c. 16. 1887.
§ 1. c. 97. 1890.

§ 2475. Bonds, how issued. Election. The bonds issued for the purposes mentioned in the last section shall be issued by the city 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 voting thereon 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 such question may be submitted at 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 2474, and they shall give at least fifteen days' public notice of such election by at least two publications thereof in a weekly newspaper published therein, or if

§§ 2,3, c.16, 1887.

there is no such newspaper then by posting such notice in five public places in such city. Such notice shall state the amount and denomination of the bonds to be voted for, the rate of interest thereof, the purpose for which such bonds are to be issued, the form of the ballots to be used and the time and place of holding such election. The judges and clerks shall be appointed and the 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. This article 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 article shall be sold at not less than par value.

ARTICLE 12. --- REFUNDING CITY BONDS.

§ 1, c. 32, 1893.
am'd.

§ 2476. Refunding authorized. Each incorporated city in this state is authorized and empowered, by and through its city council, when deemed in the judgment of said 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 funding the outstanding indebtedness of such city, represented by the city warrants, bonds or orders of such city existing against the city, which is at the time due and payable, or is about to become due and payable, or whenever said indebtedness can be refunded at a lower rate of interest than the then existing rate of interest on said indebtedness.

§ 2, c. 32, 1893.

§ 2477. Bonds, denominations, interest. Each bond issued under the provisions of this article shall recite upon its face that it is so issued. Such bonds shall be in denominations of not less than five hundred dollars nor more than one thousand dollars; shall severally show and bear the date of their issue and the date when payable, and shall be made payable in not less than five years nor more than twenty years from their date; shall be made payable to the purchaser or bearer and made payable anywhere in the United States; shall bear interest not exceeding the rate of six per cent per annum, payable annually or semiannually as may be agreed upon, and shall have interest coupons attached. Said bonds shall be engraved or lithographed on bond paper, and said bonds, and each of said 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 to each bond, but not to the coupons, the seal of such city shall be affixed.

§ 3, c. 32, 1893.

§ 2478. Sale of bonds. Such bonds may be sold by the city council at not less than their par value, and the proceeds thereof shall be applied solely to the payment of the outstanding indebtedness of such city represented by city warrants, bonds or orders which are authorized to be funded under the provisions of section 2476; or said bonds issued as herein provided may be exchanged at not less than par value for not less than an equal amount, at par value, of such outstanding bonds, warrants or orders of said city as are authorized to be funded under the provisions of section 2476, and when such exchange shall be made said outstanding bonds, warrants or orders so paid by the issue of bonds as herein provided, shall be marked respectively, "paid by bond No. . . . (stating number of such bond)," and shall be retained by the city treasurer until his settlement with the city council, and shall then be compared with the new bond

registered, and after such comparison shall be placed in the custody of the city clerk or auditor whose duty it shall be to preserve the same.

§ 2479. Record of bonds. The 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 of said bonds, its date, the date of its maturity, its amount and rate of interest and to whom and where payable. § 4, c. 32, 1893.

§ 2480. Tax for interest. Sinking fund. The city council shall, each year, levy upon the taxable property in the city a sufficient tax to pay the interest on such bonds as the same shall accrue and also, within a reasonable time before the maturity of said bonds, a sufficient tax to provide a sinking fund for the payment of such bonds at maturity. § 5, c. 32, 1893.

§ 2481. Duty of treasurer. On presentation of such bonds and the several coupons thereto attached at their maturity, respectively, it shall be the duty of the city treasurer to pay the same out of any funds in his hands applicable thereto and to cancel the same by writing or stamping across the face of each bond or coupon so paid, "canceled by payment this....day of..... (inserting the date of such payment.)" § 6, c. 32, 1893.

§ 2482. Bonds negotiable. All bonds issued in substantial conformity to the provisions of the preceding six sections shall in law be considered negotiable. § 7, c. 32, 1893.

ARTICLE 13.—REFUNDING BONDED SCHOOL INDEBTEDNESS.

§ 2483. Bonds 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 discretion of said board in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such city applicable thereto, to pay such bonds. § 1, c. 12, 1887.

§ 2484. Denomination of bonds. Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars, shall be numbered consecutively from one upward, 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 cent 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 or auditor under the seal of the city. Said bonds shall be printed, engraved or lithographed on bond paper, and a duly authenticated copy of this article shall be printed on the back of each bond. § 2, c. 12, 1887.

§ 2485. Board of education to 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. § 3, c. 12, 1887.

§ 4. c. 12, 1887.

§ 2486. Bonds, how executed. The refunding of indebtedness and the issuance of bonds provided in this article 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 or auditor 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 article, 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 or auditor shall be printed on the back of each bond. A register of all bonds so executed shall be made by the city clerk or auditor 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 article. And after such outstanding bonds shall have been so refunded the same shall be placed in the hands of the city clerk or auditor after having had first marked across the face thereof in red ink the words "refunded bond;" and the city clerk or auditor shall thereupon make a record of each bond in the same manner provided herein for bonds issued under this article 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.

ARTICLE 14.—TAXES IN CERTAIN CORPORATIONS.

§ 1. c. 139, 1887.

§ 2487. Interest fund. Any city, town or village in this state having not less than three thousand inhabitants is authorized and empowered through its proper officers to levy and collect taxes not exceeding twelve mills on the dollar of the assessed valuation of said city, town or village, for the purpose of creating an interest fund with which to pay interest upon the existing bonded indebtedness of such municipality, including bonds, if any, issued under the direction of the respective boards of education therein. If any officer of such municipality shall use the moneys collected by virtue of this section for any other purpose than that expressed herein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars or imprisoned in the county jail not less than thirty days nor more than one year.

§ 2. c. 139, 1887.

§ 2488. Sinking fund. They may also levy and collect taxes not exceeding four mills on the dollar for the purpose of creating a sinking fund to pay the bonds of the municipality as the same may mature; and the proper officers of the municipality may invest the money in said fund in interest bearing securities of the state or of any organized county therein or of the municipality, and shall in no other manner dispose of the money in said fund, and if any officer of such municipalities shall use the money in said fund in any other

manner than as provided in this section he shall be guilty of a misdemeanor.

§ 2489. **For school purposes.** They may also levy and collect taxes for school purposes not to exceed twenty mills on the dollar, the taxes so levied and collected to be kept in a fund to be called the school fund to be expended under the direction of the board of education. § 3, c. 139, 1887.

§ 2490. **For other municipal purposes.** They may also levy and collect taxes not exceeding twenty mills on the dollar for all other municipal purposes in any one year, on all taxable property within said municipality, and taxes so levied and collected shall be kept in a fund to be called the general fund. § 4, c. 139, 1887.
§ 1, c. 98, 1890.

§ 2491. **Special assessments for sidewalks.** They may also 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. § 5, c. 139, 1887.

§ 2492. **Limitation of indebtedness.** 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. § 6, c. 139, 1887.

ARTICLE 15.—COLLECTION OF CITY TAXES.

§ 2493. **City property, how assessed.** The assessors of the several incorporated cities of the state having city assessors, shall make out and deliver to the county auditors of their respective counties the assessment roll of the said city or cities at the time and in the manner provided by the general laws of the state for county and township assessors; provided, that in all incorporated cities of this state, whether incorporated under special acts, or otherwise, not having city assessors, the assessment roll of all property subject to taxation in any such city made and equalized for county purposes shall be and constitute the assessment roll for said city and the county auditor of the county in which any such city is situated shall, as soon as said assessment roll is completed, certify to the city council of every such city within his county the aggregate amount of the valuation of the taxable property in any such city as shown by said assessment roll; and provided, further, that all taxes in any such city levied before the passage and approval of this code shall be collected as now provided by law or ordinance. § 1, c. 142, 1887.
§ 1, c. 27, 1889.

§ 2494. **Duty of city council.** The city council of such cities shall on or before the first Monday in August in each year make the tax levy for the current fiscal year and fix the rate of taxation upon property in such city, and the clerks of said cities shall forthwith transmit the same to the county auditor of such county or counties. § 2, c. 142, 1887.

§ 2495. **Duty of county auditor.** It shall be the duty of the county auditor in making out the tax list for said year to place the amount of said city taxes in accordance with said levy in separate columns in the lists of both personal property and lands, opposite the respective names and parcels of land on said lists. § 3, c. 142, 1887.

§ 4, c. 142, 1887.
§ 1, c. 29, 1889.

§ 2496. Duty of county treasurer. The county treasurer of such county shall thereupon collect said taxes in the same manner as a part of the general taxes for that year, and shall pay the same over to the city treasurer of such city or cities as fast as collected, and shall take the city treasurer's voucher therefor; and the county treasurer shall retain from the moneys collected for such city or cities, as a fee to be turned over to the county, one per cent of all such moneys collected and no more.

§ 5, c. 142, 1887.

§ 2497. Salaries of city treasurers. The city council of all such cities shall have authority to regulate and fix the compensation and salaries of city treasurers within their respective cities, whether such cities have heretofore had such power under their charters or not, and such salaries shall in no case exceed six hundred dollars.

§ 6, c. 142, 1887.

§ 2498. Does not apply to taxes for special improvements. This article shall not apply to taxes levied by such cities for special improvements therein.

ARTICLE 16.—ROAD AND BRIDGE TAXES.

§ 1, c. 147, 1887.

§ 2499. Road funds to be turned over. All road taxes collected as personal taxes from residents of any incorporated city, town or village, and all road taxes collected on account of real or personal property situated within any incorporated city, town or village 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, town or village to be expended under the direction of the city council of such city or of the board of trustees of such town or village, as the case may be, in the improvement of the streets or bridges thereof or of the roads approaching thereto.

§ 1, c. 39, 1890.

§ 2500. Bridge funds to be turned over to city. The county treasurer of each county wherein any city or municipal corporation shall have constructed a bridge or shall hereafter construct a bridge over any navigable stream shall pay to the city treasurer of such city or municipality whereby such bridge has been constructed or is about to be constructed, all money in the county treasury or which may come into the county treasury in the bridge fund of such county, which may have been or shall be levied, assessed and collected from persons and property, or either, in said city or municipality.

ARTICLE 17.—LOCAL IMPROVEMENTS IN CERTAIN CITIES.

§ 1, c. 96, 1890.

§ 2501. Assessments for. The city council of any city not organized under the general law for the incorporation of cities shall have power to make assessments for local improvements on property adjoining or benefited thereby, including extension of water mains in such cities, owning and operating exclusively a public system of waterworks, to collect the same in the manner hereinafter provided, and to fix and determine and collect penalties for nonpayment of any such special assessment and taxes.

§ 2, c. 96, 1890.

§ 2502. Improvements, how made. When the city council of such city shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain or otherwise improve any street, alley, lane or highway, or other public grounds within the city limits, or extend or improve any public system of waterworks exclusively owned and operated by the said city 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 three consecutive weeks, at least once a week, in the official newspaper of the city, and unless a majority, in value, of the owners of the property liable to be assessed therefor, shall, within twenty days after the expiration of such publication, file with the city clerk or auditor a written protest against such improvement, then the city council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect the assessment upon the property so benefited in the manner and at the time other taxes are collected, and all work done under this section shall be let by contract to the lowest responsible bidder therefor.

ARTICLE 18.—PARKS AND PUBLIC GROUNDS.

§ 2503. Cities may acquire real estate for. Cities and villages in this state are empowered and authorized to receive by gift or devise, real estate within their corporate limits or within five miles thereof for purposes of parks or public grounds. Such real estate shall be vested in the city or village upon the conditions imposed by the donors, and upon the acceptance thereof by the mayor and city council or the board of trustees, the jurisdiction of the city council or board of trustees shall be extended over such real estate. The city council and board of trustees of villages shall have power to enact by-laws, rules and ordinances for the protection and preservation of any real estate acquired as herein contemplated, and to provide suitable penalties for the violation of any such by-laws, rules or ordinances. The police powers of any city or village that shall acquire any real estate as herein contemplated shall be at once extended over the same by virtue of this article. § 1, c. 99, 1890.

ARTICLE 19.—TOWN SITES LOCATED ON PUBLIC LANDS.

§ 2504. Town site, who may make entry. Whenever any portion of the public lands of the United States has been or shall be settled upon and occupied as a town site, it shall be lawful whenever requested by a majority of the occupants or owners of the lots within the limits of the town or village, for the corporate authorities of the town or village if incorporated, and if not incorporated then for the county judge 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 the respective interests. § 1, c. 135, 1881.

§ 2505. Entry fee, how raised. If at the time any petition is presented as provided for in the preceding section there is not in the treasury of the town, money 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 in section 2508. § 2, c. 135, 1881.

§ 2506. Disposition of property. When the corporate authorities of any city or town, or the county judge of any county in this § 3, c. 135, 1881.

state in which any city, town or village 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 or village 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 2, 1867, and acts amendatory thereto, it shall be the duty of such corporate authorities or county judge, his or their successors, to dispose of the trust so created and conferred by said act of congress in the manner hereinafter specified.

§ 4, c. 135, 1881.

§ 2507. Person making the entry to transfer to claimants.

Any such corporate authorities or county judge holding the title to any such lands in trust as declared in said act of congress shall, subject to the provisions of this article, 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 pursuant to the provisions of this article shall be so executed and acknowledged as to admit the same to be recorded.

§ 5, c. 135, 1881.

§ 2508. Expenses of entry and claims. Immediately upon making the entry, and during 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 the entry, and to be by publication for three weeks in some newspaper published in the county wherein the townsite is located, or if none is so published then in the newspaper published nearest thereto. 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 county judge, and either allowed, rejected or allowed in part as in the judgment of such corporate authorities or county judge may be just and right, due notice of such allowance, rejection or allowance in part to be at once given to the person who filed such verified statement. Any person filing such statement or any lot owner feeling aggrieved at the decision of such corporate authorities or judge making such allowance, rejection or allowance in part of any claim so filed, may within thirty days after the decision appeal therefrom to the district court of the district wherein such city or town is located, such appeal to be taken upon notice to such corporate authorities or judge in the same manner and subject to the same restrictions as appeals from the board of county commissioners.

§ 2509. Publication of notice of entry and claims awarded. § 6, c. 135, 1881.

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 county judge 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 is situated, or in case there is no newspaper published in such county then in the newspaper published nearest such city or town, and in the latter case where there is no newspaper published in said county, copies of such 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 townsite in executing the deeds therefor.

§ 2510. Same. The notice provided for in section 2508 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 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 or it claims 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 person signing the same. § 7, c. 135, 1881.

§ 2511. Statements of claimants 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 county judge within the time specified in said notice, and shall be by him or them filed and an abstract of the contents thereof, with the name of the claimant and date of filing, entered in a book to be kept for that 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. § 8, c. 135, 1881.

§ 2512. Conflicting claims, how treated. 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 person in possession, or if neither person is in actual possession, then the person first filing his application, shall be prima facie entitled to a deed of conveyance, and the person claiming adversely shall within said ninety days after the first publication of the notice provided for in section 2508, file with the corporate authorities or county judge a sworn statement as provided in section 2510, and at the same time a notice that he contests the statement and application for deed hitherto made, and expects at once to begin an § 9, c. 135, 1881.

action in the district court to determine his right to the property; whereupon the corporate authorities or county judge must suspend action on such disputed lot or parcel of ground until a proper certificate is 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 an 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 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 an action is begun the party recovering therein shall be entitled to a deed of conveyance upon presentation of a certified copy of the final judgment of the court in such action to the corporate authorities or county judge. Upon receiving the certificate aforesaid or the certified copy of judgment the same shall be filed and an abstract of the contents entered in the record of claimants' statements; and the corporate authorities or county judge shall thereupon execute deeds of conveyance to the party entitled to 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.

§ 10, c. 135, 1881.

§ 2513. Extent of ground that may be claimed. 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 article, 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 is exclusively occupied by or in the possession of such claimant and has 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 above required 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.

§ 11, c. 135, 1881.

§ 2514. Expenses to be paid by claimant. Each person shall upon filing an applicant's statement as herein provided be required to pay to the corporate authorities or county judge 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 herein, 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, 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 herein, which charges shall be in full payment for all expenses attending the execution of the trust. In case of appeals provided for in section 2508, the sum of one dollar shall be paid for a certified copy of statement of account filed and certificate of decision and award made; and pending such appeal and the review by the district court of any award or allowance of claims for expenses in procuring the entry of land, as provided for in section 2508, the corporate authorities or county judge must in making and apportioning expenses take care that their estimate is 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 county judge shall after final judgment refund to the unsuccessful party all money so advanced by such party, except the sum of one dollar, which shall be retained as fees for taking and filing affidavits, statements, notice of contest, and certified copy of judgment.

§ 2515. Deeds to be given. After the expiration of ninety days from the date of the first publication of the notice required by section 2508 the corporate authorities or county judge shall proceed to award the lot or lots, parcel or parcels of land as provided in this article, 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 claim, read proofs filed and hear additional testimony if deemed advisable, and if the claim is found to comply with the provisions of this article, and no adverse claim and notice of contest shall have been filed, such corporate authorities or judge 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. § 12, c. 135, 1881.

§ 2516. Conveyance of unclaimed lots. When any lots or parcels of land within the limits of any city or village shall remain unclaimed after the expiration of the time allowed by this article for the filing of claimants' statements, it shall be the duty of the corporate authorities or county judge to convey the lots or parcels of land so remaining unclaimed, by a good and sufficient deed, to the board of education of such city or village or to the said city or village for the use of schools, if either said board of education or said city or village may by law take and hold real estate for the use of schools, to be disposed of by such board of education for school purposes and for the exclusive use and benefit of the school district in which such city or village may be situated or which it may form under such directions and limitations as are provided by this article. § 13, c. 135, 1881.
1, c. 114, 1883.
1, c. 124, 1889.

§ 2517. Sale, when. If there is no such board of education, or if said city or village is not legally authorized to take and hold real estate for the use of schools, then the corporate authorities or county judge shall sell and dispose of the said unclaimed lots or parcels of lands so remaining for school purposes and for the exclusive use and § 14, c. 135, 1881.
2, c. 114, 1883.
2, c. 124, 1889.

benefit of the school district in which said city or village may be situated or which it may form under the directions, limitations and provisions contained in this article.

§ 3, c. 114, 1883.

§ 2518. Unclaimed lands to be appraised. The board of education, corporate authorities or county judge aforesaid shall appoint three competent and suitable freeholders of such city, town or village 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 appraisement they shall make and return a full and complete report of their proceedings and appraisement to the board of education, corporate authorities or county judge, 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 bounds, and upon each lot or parcel of land separately they shall designate the valuation thereof as fixed by their appraisement; said appraisement and report shall be subscribed and sworn to by at least two of said appraisers.

§ 4, c. 114, 1883.

§ 2519. Public sale of unclaimed lands. The board of education, corporate authorities or county judge 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.

§ 5, c. 114, 1883.

§ 2520. Bids. Private sale. At the time and place appointed in such notice the board of education, corporate authorities or county judge 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 such board of education, corporate authorities or county judge for a sum of money not less than the appraised valuation thereof, and not otherwise.

§ 6, c. 114, 1883.

§ 2521. Purchaser shall pay for deed. 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, corporate authorities or county judge 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 for conducting sale, giving notice, appointing appraisers, and other services.

§ 2522. Proceeds of sale, how applied. The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expenses of advertising, printing and a per diem of not more than three dollars per day to each member of the board of appraisers for the time actually and necessarily employed by them in making such appraisal 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, corporate authorities or county judge to the treasurer of the school district, and by said treasurer placed to the credit of the school house fund of said school district, to be disbursed and applied only in the payment of outstanding bonds, warrants or other indebtedness against said school district, contracted or created in the erection or construction of school houses, procuring grounds or appurtenances therewith, if any such bonds, warrants or other indebtedness exist, otherwise to be applied and placed to the credit of the general school fund of the school district. § 7, c. 114, 1883.

§ 2523. Surplus, how disposed of. In case there should be found any surplus on hand over and above receipts for fees and awards for expenses arising from the conveyances of lots as provided in section 2514, then such surplus shall as soon as ascertained by the corporate authorities or county judge be accounted for and turned over to the treasurer of the school district wherein such city, town or village may be situated, to be by such school district treasurer placed to the credit of the school house fund, then to be disbursed and applied as herein provided for the disbursement of proceeds derived from the sale of unclaimed lots or parcels of land. § 8, c. 114, 1883.

§ 2524. Expiration of term of person making entry of town site. Whenever the term of office of any corporate authorities or county judge 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 a 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 willful violation of the provisions of this article by the corporate authorities or county judge shall be a misdemeanor; any such corporate authorities or county judge willfully making out a deed to any person not entitled to receive the same shall be deemed guilty of a misdemeanor; and any such corporate authorities or county judge willfully misappropriating funds received by them in the execution of this trust shall be guilty of embezzlement. § 14, c. 135, 1881.

§ 2525. The provisions of this and the preceding chapter shall apply to and govern all towns heretofore incorporated.

CHAPTER 31.

TOWNSHIP GOVERNMENT.

ARTICLE 1.—HOW ORGANIZED AND NAMED.

§ 1. sub-c. 1, c.
112, 1883.

§ 2526. Petition for organization of township. Whenever a majority of the legal voters of any congressional township in this state containing twenty-five legal voters petition the board of county commissioners to be organized as a township under this article, such board shall forthwith proceed to fix and determine the boundaries of such new township and to name the same; and the board shall make a full report of all its proceedings in relation to laying off such township and file the same with the county auditor.

§ 2. sub-c. 1, c.
112, 1883.
§ 1. c. 50, Sp.
1885.

§ 2527. Fragment of township attached to adjoining township. A fraction of a township may be attached by such board to an adjoining township or be divided between two or more townships or organized separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers, lakes or creeks so divide a township as to make it inconvenient to do township business, such board may dispose of any fraction so formed by annexing the same to an adjoining township in the same county if it shall seem to it proper, whenever petitioned to do so by not less than two-thirds of the legal voters residing in such fraction, and the fact that any such petition is signed by two-thirds of such voters may be proved by the affidavit of any legal voter residing in such fraction having knowledge of the fact; and townships having two or more villages or cities, each containing two hundred or more inhabitants, may petition the board of county commissioners for division; and whenever the board are so petitioned, it may, if it thinks the interest of such township will be subserved thereby, divide such townships in such manner as will best suit the convenience of the territory. And the board of county commissioners of any county lying west of the Missouri River may unite not less than four congressional townships into one civil township, or may add not more than three congressional townships to any congressional township already organized as a civil township, when petitioned by a majority of the legal voters affected thereby, if in the opinion of the board the best interests of such townships will be subserved thereby; provided, however, that at least twenty days' notice shall be given by the board of county commissioners to the chairman of the board of supervisors of each township affected by the change, before action is taken thereon; provided, further, that nothing herein contained shall be construed to release any property in or belonging to that part of any township so detached, from any tax levied or assessed prior to such division being made; provided, also, that the portion of any township annexed to any other township and any village or city separated from any township under the provisions of this article, shall not be released from nor in any way discharged from the payment of any bonded or other indebtedness that may exist against the township from which separation has been made.

§ 3. sub-c. 1, c.
112, 1883.

§ 2528. Name of township. Townships thus formed shall be named in accordance with the expressed wish of a majority of the legal voters residing therein, but if they fail to designate a name the board of county commissioners may select a name.

§ 2529. First township meeting. The board of county commissioners shall thereupon make out notices designating a suitable place for holding the first township meeting in each township, which shall be held within twenty days after the township is organized; and the county auditor shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in each township not less than ten days before the day set for such meeting. § 4, sub-c. 1, c. 112, 1883.

§ 2530. County auditor transmits name to state auditor. Each county auditor shall, within thirty days after such township is organized, transmit by mail to the state auditor an abstract of such report, giving the bounds of each township and the name designated; and the county auditor shall record in a book kept for that purpose a full description of each township. § 5, sub-c. 1, c. 112, 1883.

§ 2531. When similar names are adopted by different townships. If the state auditor on comparing the abstract of the reports from the several counties finds that any two or more townships have the same name he shall transmit to the county auditor of the proper county the name of the township to be altered; and the board of county commissioners shall at its next meeting thereafter adopt for such township some name different from those theretofore named, so that no two townships organized under this chapter shall have the same name, and when such name is adopted the county auditor shall inform the the state auditor as before directed. § 6, sub-c. 1, c. 112, 1883.

§ 2532. Present boundaries to remain. The boundary lines of each organized township shall remain as now established until otherwise provided by the board of county commissioners under authority of law. § 7, sub-c. 1, c. 112, 1883.

ARTICLE 2.—DIVISION OF ORGANIZED TOWNSHIPS.

§ 2533. Civil townships, how formed. Any congressional township which has residing therein one hundred or more inhabitants and forms part of an organized civil township comprising two or more congressional townships, not a fractional, may be set apart and organized as a separate civil township in the manner herein provided and when duly organized shall have the same powers and privileges and be subject to the same liabilities and restrictions as other civil townships except as herein otherwise provided; but no civil township shall be so formed, under the provisions of this article, as to leave residing in the former township less than one hundred inhabitants. § 1, c. 30, 1895.

§ 2534. Petition county commissioners. Notice published. The legal voters residing in such congressional township may petition the board of county commissioners of the county in which it is situated, at any regular meeting of said board, to be set off as a separate civil township, upon at least thirty days' previous notice thereof, and of the time and place of application, which notice shall be published at least three times in the newspaper in which the proceedings of said board are published or, if there is none such, notice shall be posted in at least three public places in the proposed new township, and as many more elsewhere in the township affected thereby, one of which shall be at the place where the last election was held. § 2, c. 30, 1895.

§ 2535. When board shall set off township. Election. Upon presentation of such petition signed by a majority of the legal § 3, c. 30, 1895.

voters residing within such proposed township and due proof of notice as herein provided and of the further fact that the territory has the requisite number of inhabitants and the petition, the requisite number of competent signers as aforesaid, the board shall proceed to set off said congressional township as a separate civil township, and constitute the same an election precinct, and designate the place of holding elections and the time and place of holding the first township meeting therein and notice thereof shall be given as in other cases.

§ 4, c. 30, 1895.

§ 2536. Proportional share of moneys. Liabilities. The new township shall succeed to a proportional share of the moneys and other property of the former township and to a like share of its debts and liabilities existing at the time of the division, such proportion to be determined by the relative value of the property of the respective parts as shown by the last preceding assessment and the account shall be settled between them by the board of county commissioners at its next regular meeting after the organization of the new township from the best evidence obtainable and for that purpose said board shall have power to bring before it the necessary witnesses, books and papers upon subpoenas to be issued by the clerk of the district court upon request of the chairman, and the statement of such account shall be conclusive as between the respective townships unless appealed from as provided by law, but the enforcement of their respective obligations thereon must be left to the courts; provided, however, that no division of a civil township as herein provided shall operate to prevent the enforcement of obligations existing prior thereto to the same extent as if no division was made.

ARTICLE 3.—CORPORATE POWERS.

§ 8, sub-c. 1, c.
112, 1883.

§ 2537. Powers of township. Each township is a body corporate and has capacity:

1. To sue and be sued.
2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the powers of the legislative assembly.
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 inhabitants.

§ 9, sub-c. 1, c.
112, 1883.

§ 2538. Powers of limited. No township shall possess or exercise any corporate powers except such as are enumerated in this chapter, or specially given by law or necessary to the exercise of the powers so enumerated or granted.

§ 10, sub-c. 1, c.
112, 1883.

§ 2539. Actions to be in corporate name. All acts or proceedings by or against a township in its corporate capacity shall be in the name of such township; but each conveyance of land within the limits of such township, made in any manner for the use or benefit of its inhabitants, has the same effect as if made to the township by name.

ARTICLE 4.—ANNUAL TOWNSHIP MEETINGS.

§ 11, sub-c. 1, c.
112, 1883.

§ 2540. Annual meeting, when held. The citizens of the several townships of this state qualified to vote at general elections

shall annually assemble and hold township meetings in their respective townships on the first Tuesday of March, at such place in each township as the electors thereof at their annual township meetings, from time to time, appoint; and notice of the time and place of holding such meetings shall be given by the township clerk by posting up written or printed notices in three of the most public places in such township at least ten days prior to such meetings; provided, that before any change of place of holding meetings is made, notice of such contemplated change may be given by any member of the township board to the township clerk, who shall in his regularly printed or written notices, as above provided, incorporate the special notice of the contemplated change of place of holding such meetings.

§ 2541. **What officers shall be chosen.** There shall be elected at the annual township meeting in each township, three supervisors, one of whom shall be designated on the ballots as chairman, one township clerk, one treasurer, one assessor, two justices of the peace, two constables and one overseer of highways for each road district in such township, but justices of the peace and constables shall be elected only once in two years, except to fill vacancies. § 12, sub-c. 1, c. 112, 1883.

§ 2542. **Powers of electors.** The electors of each township have power at the annual township meeting: § 13, sub-c. 1, c. 112, 1883.

1. To determine the number of pound masters and the location of pounds.
2. To select such township officers as are required to be chosen.
3. To direct the institution or defense of actions in all controversies where such township is interested.
4. To direct such sums to be raised in such township 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 the township, as they think proper, not exceeding ten dollars for each offense except as herein otherwise provided.
7. To apply such penalties, when collected, in such manner as they deem most conducive to the interests of the township.
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 charges, as they deem expedient; provided, that they may at their annual meeting direct such an amount of the poll or road tax of the township to be expended on the highways in an adjoining township as they deem conducive to the interests of the township, which labor and tax shall be expended under the direction of the supervisors of the township furnishing the same; provided, further, that where more than one entire congressional township is included within an organized township, 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 township in an adjoining township.

ARTICLE 5. — SPECIAL MEETINGS.

§ 2543. **Special meetings held, when.** Special meetings may be held for the purpose of electing township officers to fill vacancies that occur, also for the purpose of transacting any lawful business. § 14, sub-c. 1, c. 112, 1883.

ness, whenever the supervisors, township clerk and justices of the peace, or any two of them, together with at least twelve freeholders of the township file in the office of the township clerk a written statement that a special meeting is necessary.

§ 17, sub-c. 1, c.
112, 1883.

§ 2544. Clerk to give notice of meeting. Each 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 township, giving at least ten days' notice of such special meeting; and if there is a newspaper published in the township he shall cause a copy of such notice to be published therein at least three days before the time appointed for such meeting.

§ 18, sub-c. 1, c.
112, 1883.

§ 2545. What notice must specify. Each notice given for a special 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 term of each office expires.

ARTICLE 6. — MODE OF CONDUCTING TOWNSHIP MEETINGS.

§ 19, sub-c. 1, c.
112, 1883.

§ 2546. Organization of meeting. The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual or special meeting, shall be called to order by the township clerk, if present; in case he is not present then the voters may elect by acclamation one of their number chairman and three of their number judges of such 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 clerk last before elected shall be clerk of the meeting, and keep full minutes of its proceedings, in which he shall enter at length every order or direction and all rules and regulations made by the meeting. If the clerk is absent, then some person shall be elected to act as clerk of the meeting.

§ 20, sub-c. 1, c.
112, 1883.

§ 2547. Duty of moderator. Reconsideration of vote. At the opening of each 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 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 township 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.

§ 21, sub-c. 1, c.
112, 1883.

§ 2548. Proclamation of opening and closing polls. Before the electors proceed to elect any township 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.

§ 22, sub-c. 1, c.
112, 1883.

§ 2549. Who are voters. No person shall vote at any township meeting unless he is qualified to vote at general elections, and

has been for the last ninety days an actual resident of the township wherein he offers to vote.

§ 2550. **Challenge to voter.** If any person offering to vote at any election or upon any question arising at such township meeting is challenged as unqualified, the judges of the 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 township meeting. § 23, sub-c. 1, c. 112, 1883.

§ 2551. **Certain officers to be elected by ballot.** The supervisors, treasurer, township clerk, assessor, justices of the peace, constables and overseer of 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. § 24, sub-c. 1, c. 112, 1883.

§ 2552. **All candidates on one ballot.** When the electors vote by ballot all the candidates voted for shall be named on 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. § 25, sub-c. 1, c. 112, 1883.

§ 2553. **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. § 26, sub-c. 1, c. 112, 1883.

§ 2554. **Judges to deposit ballots.** When the election is by ballot one of the judges shall deposit the ballots in a box provided for that purpose. § 27, sub-c. 1, c. 112, 1883.

§ 2555. **Judges to canvass the 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. § 28, sub-c. 1, c. 112, 1883.

§ 2556. **Manner of canvassing.** The canvass shall be conducted by taking one 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 immediately destroy the ballots. § 29, sub-c. 1, c. 112, 1883.

§ 2557. **Result to be announced.** 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. § 30, sub-c. 1, c. 112, 1883.

§ 2558. **Minutes to be filed.** The minutes of the proceedings of each meeting, subscribed by the clerk of said meeting and by the judges, shall be filed in the office of the township clerk within two days after such meeting. § 31, sub-c. 1, c. 112, 1883.

§ 32, sub-c. 1, c.
112, 1883.

§ 2559. Notice of election. The clerk of each township meeting shall within ten days thereafter transmit to each person elected to any township office, whose name is not entered on the poll list as a voter, a notice of his election.

§ 33, sub-c. 1, c.
112, 1883.

§ 2560. Proceedings when meeting fails to elect. In case any township refuses or neglects to organize and elect township officers at the time fixed by law for holding annual township meetings, twelve freeholders of the township may call a township meeting for the purpose aforesaid, by posting notices in three public places in such township, giving at least ten days' notice of such meeting; which notice shall set forth the time, 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 township meeting. In case no such notice is given as aforesaid within thirty days after the time for holding the annual meeting, the board of county commissioners of the county shall, on the affidavit of any freeholder of the township, filed in the office of the clerk of the board, setting forth the facts, at any regular or special meeting of the board, appoint the necessary township officers of such township, and the persons so appointed shall hold their respective offices until others are elected and qualified in their places, and shall have the same power and be subject to the same duties as if they had been duly elected.

ARTICLE 7. — BY-LAWS.

§ 14, sub-c. 1, c.
112, 1883.

§ 2561. By-laws. No by-law made by any township shall take effect before the same is published by posting copies thereof in three of the most public places in the township; and such by-laws, duly made and so published, are binding upon all persons coming within the limits of the township as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent township meeting.

§ 15, sub-c. 1, c.
112, 1883.

§ 2562. Clerk shall post by-laws. The township clerk shall post in three of the most public places in his township, copies of all by-laws made by such township, and shall make an entry in the township records of the time when, and the place where such by-laws were posted.

ARTICLE 8. — QUALIFICATION OF OFFICERS.

§ 34, sub-c. 1, c.
112, 1883.

§ 2563. Voter is eligible to office. Each person qualified to vote at township meetings is eligible to any township office.

§ 35, sub-c. 1, c.
112, 1883.

§ 2564. Officers to take oath. Each person elected or appointed to the office of supervisor, township clerk, assessor, treasurer or constable, shall, within ten days after he is notified of his election or appointment, take and subscribe, before the township clerk or justice of the peace, the oath prescribed in section 211 of the constitution. Such oath shall be administered without fee and certified by the officer before whom it is taken, with the date of taking the same.

§ 36, sub-c. 1, c.
112, 1883.

§ 2565. Certificate of oath to be 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 township clerk.

§ 2566. **Justice to take oath and give bond.** Each 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 officer authorized to administer oaths the oath prescribed in section 211 of the constitution. Such justice shall also execute a bond as provided in chapter 6 of this code and file the same with the clerk of the district court of the proper county for the benefit of any person aggrieved by the acts of such justice, and any person aggrieved may maintain an action on said bond in his own name against such justice and his sureties. § 37, sub-c. 1, c. 112, 1883.

§ 2567. **Certificate to official acts of justice.** The bond and oath of office of a justice of the peace, filed in the office of the clerk of the district 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. § 94, c. 59, 1879.

§ 2568. **Jurisdiction of township justices.** All justices of the peace of any township in 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 under the provisions of the justices' code, and all amendments made or which may be hereafter made to said code. § 1, c. 129, 1881.

§ 2569. **Proceedings before township justices.** The civil and criminal proceedings before township justices of the peace shall be governed and controlled by the justices' code, and the code of criminal procedure and the amendments made or which may hereafter be made to said codes. § 2, c. 129, 1881.

§ 2570. **Bond of treasurer.** Each person elected or appointed to the office of treasurer, before entering upon the duties of his office, shall execute a bond in double the probable amount of money to be received by him, which amount shall be determined by the board of supervisors of the township. § 38, sub-c. 1, c. 112, 1883.

§ 2571. **Constable to take oath and give bond.** Each person chosen to the office of constable, before entering 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 and execute a bond as prescribed by law. Such bond shall be approved and filed as provided in chapter 6 of this code. § 40, sub-c. 1, c. 112, 1883, am'd.

§ 2572. **Bond of assessor to be filed.** Each township assessor shall give a bond in the penal sum of five hundred dollars and shall immediately after the approval thereof, deliver the same to the township clerk, whose duty it shall be forthwith to file such bond with the county auditor. § 1, c. 128, 1889, am'd.

§ 2573. **Neglect to qualify.** If any person elected or appointed to any township 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. § 42, sub-c. 1, c. 112, 1883.

§ 2574. **Penalty for neglect to take oath.** If any township officer who is required by law to take an oath of office, enters upon the duties of his office before taking such oath, he forfeits to such township the sum of fifty dollars. § 43, sub-c. 1, c. 112, 1883.

§ 2575. **Road overseer and pound master to file acceptance.** Each 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 township clerk a notice § 44, sub-c. 1, c. 112, 1883.

signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve.

§ 45, sub-c. 1, c.
112, 1883.

§ 2576. Term of office of township officers. Township officers, except justices of the peace and constables, shall hold their offices for one year and until their successors are elected or appointed and qualified. Justices of the peace and constables shall hold their offices for two years and until their successors are elected and qualified.

ARTICLE 9. — VACANCIES.

§ 46, sub-c. 1, c.
112, 1883.

§ 2577. Board may accept resignations. The board of supervisors of any township may for sufficient cause shown to it accept the resignation of any officer in its township, and whenever it accepts any such resignation it shall forthwith give notice thereof to the township clerk.

§ 47, sub-c. 1, c.
112, 1883.

§ 2578. Vacancies filled, how. Whenever any township fails to elect the proper number of officers, or whenever any person elected to a township office fails to qualify, or whenever any vacancy happens in any township office from death, resignation, removal from the township or other cause, the justices of the peace of the township, 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 meeting and until their successors are elected and qualified, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected.

§ 48, sub-c. 1, c.
112, 1883.

§ 2579. Vacancies in appointing board. Whenever a vacancy occurs from any cause in the office of justice of the peace or township supervisor, the remaining officers of such appointing board shall fill any vacancy thus occurring.

§ 1, c. 156, 1887.

§ 2580. When county auditor to appoint township assessor. When any township assessor is elected and fails or refuses to qualify or to discharge the duties of his office, or if the electors of a township fail for any reason to elect an assessor, and the township board of said township fails or refuses to appoint an assessor for the township on or before the fifteenth day of April of the year for which such assessor is to serve, it shall be the duty of the county auditor to appoint an assessor for such township, who shall be a resident of the township for which he is to serve as assessor.

ARTICLE 10. — BOARD OF HEALTH.

§ 50, sub-c. 1, c.
112, 1883.

§ 2581. Supervisors as board of health. The township supervisors shall constitute a board of health, and within their respective townships shall have and exercise all the powers necessary for the preservation of the public health.

§ 51, sub-c. 1, c.
112, 1883.

§ 2582. Powers of board of health. The board of health may examine into all nuisances, sources of filth and causes of sickness, and make such regulations respecting the same as it may judge necessary for the public health and safety of the inhabitants; and each person who violates any order or regulation made by any board of health and duly published is guilty of a misdemeanor and is punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months.

§ 2583. **Public notice of orders and regulations.** Notice shall be given by the board of health of all orders and regulations made by it, by publishing the same in some newspaper if there is one published in such township 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. § 52, sub-c. 1, c. 112, 1883.

§ 2584. **Penalty for refusal to obey order.** 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 township. § 53, sub-c. 1, c. 112, 1883.

§ 2585. **Proceedings on such refusal.** Whenever such owner or occupant shall fail to 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 such owner or occupant or by the person causing or permitting the same. § 54, sub-c. 1, c. 112, 1883.

§ 2586. **Board to enter infected premises. Proceedings if opposed.** Whenever the board of health deems it necessary for the preservation of the health of its inhabitants to enter any building or vessel in the township 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 township, stating the facts in the case so far as he has knowledge thereof. § 55, sub-c. 1, c. 112, 1883.

§ 2587. **Warrant to be issued by justice.** 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 members 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 destroy, remove or prevent the same under the direction of the members of such board of health. § 56, sub-c. 1, c. 112, 1883.

§ 2588. **Quarantine of infected person.** When any person coming from abroad or residing in any city, town or village in this state is infected or lately has been infected with the smallpox or other contagious disease dangerous to the public health, the board of health of the city, town or village 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 health, and shall provide for such person a nurse, medical attendance and other necessities, which shall be a charge in favor of such city, town or village against the person so provided for, his parents, guardian or master, if able, otherwise against the county to which he belongs, or the state if such person is a nonresident of the state. § 57, sub-c. 1, c. 112, 1883.

§ 2589. **Same. When person cannot be moved.** If such infected person cannot be removed without danger to his health, the board shall make provision as directed in the preceding section, for such person in the house where he may be, and in such case it may cause the persons in the neighborhood to be removed; and may take such other measures as it deems necessary for the safety of the inhabitants. § 58, sub-c. 1, c. 112, 1883.

§ 59, sub-c. 1, c.
112, 1883.

§ 2590. Board to provide hospital. When a disease dangerous to the public health breaks out in any township, 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 permit 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.

ARTICLE 11.—POWERS AND DUTIES OF SUPERVISORS.

§ 1, c. 155, 1887.

§ 2591. Regular meetings. The township board of supervisors shall hold regular meetings on the last Tuesday of February, the last Tuesday of March, the fourth Monday of June and the last Tuesday of October of each year.

§ 2, c. 155, 1887.

§ 2592. Where held. Such meetings shall be held at the office of the township clerk or at the usual place for holding the annual township meetings if there is one. It shall meet not later than ten o'clock A. M. and shall not adjourn before four o'clock P. M.

§ 3, c. 155, 1887.

§ 2593. Business to be transacted. At its meetings in February and June it shall perform all the duties now required of it by law to be transacted at such meetings, and any other business that may legally come before it.

§ 4, c. 155, 1887.

§ 2594. Approve bonds of township officers. At its meeting in March the chairman 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 article 7 of chapter 17.

§ 5, c. 155, 1887.

§ 2595. Audit accounts. At its meeting in October it shall audit accounts, settle with the road overseers and transact any other business that may come before it.

§ 6, c. 155, 1887.

§ 2596. Adjourned and special meetings. It may adjourn from time to time, and in cases of emergency may hold special meetings on call of the clerk on three days' notice.

§ 7, c. 155, 1887.

§ 2597. Business with board. When to appear. It shall be the duty of all persons having business to transact with the board of supervisors of any township to appear before such board at any regular meeting, or file such business with the clerk to be laid before the board by him at its next meeting.

§ 60, sub-c. 1, c.
112, 1883.

§ 2598. Powers of supervisors. The supervisors shall have charge of such affairs of the township as are not by law committed to other township officers; and they shall have power to draw orders on the township treasurer for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the township and for all moneys raised by the township to be disbursed for any other purpose.

§ 61, sub-c. 1, c.
112, 1883.

§ 2599. Improving streets. Whenever any incorporated village or town which is laid out into streets is included in the limits of an organized township, the township supervisors are authorized to cause improvements to be made in any street that may be needed as a highway if the corporate authorities of such village or town neglect to make such improvements.

§ 2600. **Board to prosecute actions.** The supervisors shall by their name of office prosecute for the benefit of the township, 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 township; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure, highway or property belonging to the township, and shall pay all moneys collected under this section to the township treasurer. § 62, sub-c. 1, c. 112, 1883.

§ 2601. **Quorum of the board.** Any two of the supervisors shall constitute a quorum for the performance of any duties required by law of the township supervisors, except when otherwise provided. § 63, sub-c. 1, c. 112, 1883.

ARTICLE 12.—POWERS AND DUTIES OF OFFICERS.

TOWNSHIP CLERK.

§ 2602. **Clerks may administer oaths.** The township clerk of the several townships, city clerks or auditors of all cities, and recorders of all town or villages in this state, are authorized to administer oaths and take acknowledgments of instruments, authorized or required by law. § 64, sub-c. 1, c. 112, 1883.

§ 2603. **May appoint deputy.** The township clerk shall have the custody of the record books and papers of the township 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, for whose acts he shall be responsible. Before any deputy clerk enters 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 district court. § 65, sub-c. 1, c. 112, 1883.

§ 2604. **Shall keep records.** The clerk shall record in the book of records of his township, minutes of the proceedings of each township meeting, and enter therein each order or direction and all rules and regulations of any such meeting; and shall also file and preserve all accounts audited by the township board or allowed at a township meeting, and enter a statement thereof in such book of records. § 66, sub-c. 1, c. 112, 1883.

§ 2605. **Clerk to give bond and take oath.** Each person elected or appointed to the office of township clerk shall, before entering 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 sureties to be approved by the township treasurer, in such penal sum as the supervisors direct, conditioned for the faithful discharge of his duties. Such bond so approved shall be filed in the office of the clerk of the district court for the benefit of any person aggrieved by the acts or omissions of such clerk, and any person so aggrieved or the township may maintain an action on such bond against said clerk and his sureties. § 67, sub-c. 1, c. 112, 1883.

§ 2606. **Send name of constable to clerk of district court.** Each township clerk, immediately after the qualification of any constable elected or appointed in his township, shall transmit to the clerk of the district court of the county the name of such constable. § 68, sub-c. 1, c. 112, 1883.

§ 2607. **Send name of justice to clerk of district court.** Each township clerk shall immediately after the election of any § 69, sub-c. 1, c. 112, 1883.

justice of the peace in his township transmit a written notice thereof to the clerk of the district court of the 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 such notice who was the last incumbent of the office.

§ 70, sub-c. 1, c.
112, 1883.

§ 2608. Penalty for neglect. If any township clerk willfully neglects to make such return he shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding ten dollars.

TOWNSHIP TREASURER.

§ 71, sub-c. 1, c.
112, 1883.

§ 2609. Duties of treasurer. The township treasurer shall receive and take charge of all moneys belonging to the township or which are by law required to be paid into the township treasury, and shall pay over and account for the same upon the order of such township 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.

§ 72, sub-c. 1, c.
112, 1883.

§ 2610. To keep account of receipts and disbursements. Each township 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 township for that purpose, and exhibit such account, together with his vouchers, to the township 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.

§ 73, sub-c. 1, c.
112, 1883.

§ 2611. Treasurer to draw moneys from the county. The township treasurer shall from time to time draw from the county treasury such moneys as have been received by the county treasurer for the use of his township and on receipt of such moneys shall deliver proper vouchers therefor. Each township treasurer shall be allowed and entitled to retain two per cent of all moneys paid into the township treasury for receiving, safely keeping and paying over the same according to law.

§ 74, sub-c. 1, c.
112, 1883.
§ 1, c. 157, 1887.

§ 2612. Treasurer to make statement. Each township treasurer within five days preceding the annual township meeting shall make out a statement in writing of the moneys by him received into the township 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 township clerk, and shall be by such clerk carefully preserved and recorded in the township book of records, and a duplicate of such statement shall at the same time be filed by the township treasurer with the county auditor of his county.

§ 2613. **Penalty for neglect.** Each township 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 township of which such delinquent is or has been treasurer. § 75, sub-c. 1, c. 112, 1883.

§ 2614. **Warrant record. Indorsement of warrants not paid.** Each township treasurer shall keep a suitable book to be provided at the expense of the township in which he shall enter the township orders that he cannot pay for want of funds when presented to him for payment, which orders when presented shall be indorsed 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 his name as township treasurer, which order when so indorsed shall bear interest from that date until paid. All township orders shall be paid in the order that they are registered, out of the first moneys that come into the treasurer's hands for such purposes. § 76, sub-c. 1, c. 112, 1883.

ASSESSORS.

§ 2615. **Assessors, how governed.** The township assessor shall be governed by and make assessments and returns as provided in the chapter on revenue and taxation of this code, and shall be paid for his service out of the township treasury. § 55, c. 59, 1879.

ARTICLE 13.—BOARD OF AUDITORS.

§ 2616. **Supervisors to audit accounts.** The supervisors constitute a board of audit for the purpose of auditing all accounts payable by the township; and if for any cause there are not three supervisors present to constitute such board the chairman, and in his absence either of the supervisors, may notify any one or as many of the justices of the peace of the township as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the township board. § 77, sub-c. 1, c. 112, 1883.

§ 2617. **Meetings of board.** The board shall meet on the Tuesday next preceding the annual township meeting, and on the last Tuesday of October in each year, and at such other times as it deems necessary and expedient for the purpose of auditing and settling all charges against the township; and it shall state on each account the amount allowed by it; but no allowance shall be made for any account which does not specifically state each item of the same and the nature thereof. § 78, sub-c. 1, c. 112, 1883.
§ 5, c. 155, 1887.

§ 2618. **Board to audit accounts of treasurer at annual meeting.** The board shall also, at its annual meeting on the last Tuesday of February in each year, examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as such officer; and it shall audit the accounts of all other township officers who are authorized by law to receive or disburse any money of the township by virtue of their office. § 79, sub-c. 1, c. 112, 1883.

§ 2619. **Board to report accounts audited and allowed.** Such board shall make a report, stating in detail the items of account § 80, sub-c. 1, c. 112, 1883.

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 township, 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.

§ 81, sub-c. 1, c.
112, 1883.

§ 2620. Report to be read at township meeting. Such report shall be produced and publicly read by the township clerk at the next ensuing township meeting, and the whole or any portion of such report may be referred by order of the meeting to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

§ 82, sub-c. 1, c.
112, 1883.

§ 2621. Treasurer shall pay all orders. The amount of any account audited and allowed by the board and the amount of any account voted to be allowed at any township meeting shall be paid by the township treasurer on the order of the board signed by the chairman and countersigned by the clerk; and all orders issued to any person by the board for any sum due from such township shall be receivable in payment of township taxes of such township.

§ 83, sub-c. 1, c.
112, 1883.

§ 2622. Clerk of the board of supervisors. The township clerk shall be clerk of the township board, and shall keep in his office a true record of all its proceedings.

ARTICLE 14. — FEES OF OFFICERS.

§ 86, sub-c. 1, c.
112, 1883.
§ 1, c. 126, 1889,
am'd.

§ 2623. Compensation of assessor. The township assessor shall receive for his services three dollars per day for each day necessarily devoted by him to the service of the township while engaged in his duties as such assessor; provided, that such compensation shall not exceed the sum of sixty dollars in any one congressional township.

§ 86, sub-c. 1, c.
112, 1883.

§ 2624. Compensation of clerk and supervisors. The township clerk and supervisors shall receive for their services one dollar and fifty cents per day for each day necessarily devoted by them to the service of the township when attending to business in their township, and two dollars when attending to business out of the township; no township supervisor shall receive more than thirty-five dollars compensation in any one year; provided, that the township clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon township 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 one hundred words; for copying any record or instrument on file in his office and certifying the same, ten cents for each one hundred words, to be paid for by the person applying for the same.

§ 86, sub-c. 1, c.
112, 1883.

§ 2625. Compensation, increasing or reducing. At any township 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.

ARTICLE 15. — CLAIMS AGAINST TOWNSHIPS.

§ 87, sub-c. 1, c.
112, 1883.

§ 2626. Claims against townships. Accounts stated, how. Before any account, claim or demand against any township or county of this state for any property or services for which such township 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, or that the property therein charged for was actually delivered or used for the purposes therein stated and was of the value therein charged, or 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 article 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.

§ 2627. 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 each member of such board is hereby authorized to administer the proper oath in such cases; and each person who willfully or knowingly swears falsely on any such claim shall be deemed guilty of perjury and be punished accordingly.

§ 88, sub-c. 1, c.
112, 1883.

§ 2628. What accounts need not be verified. 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 required to verify the same, but may prove the same otherwise to the satisfaction of the board.

§ 88, sub-c. 1, c.
112, 1883.

§ 2629. Consideration of account and action thereon. Whenever an account, claim or demand against any township or county shall have been verified in the manner prescribed in this article, the board to whom the same is 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.

§ 89, sub-c. 1, c.
112, 1883.

§ 2630. Penalty for auditing an account not verified. Any member of such board who shall audit and allow any account, claim or demand required by this article 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 a fine of not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both.

§ 90, sub-c. 1, c.
112, 1883.

ARTICLE 16.—SUITS BY AND AGAINST TOWNSHIPS.

§ 2631. Proceedings in. Whenever any controversy or cause of action exists between townships or between a township and an individual or corporation, a civil action may be commenced and prosecuted for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations.

§ 91, sub-c. 1, c.
112, 1883.

§ 2632. Township to sue in its name. In all such actions and proceedings the township shall sue and be sued in its name,

§ 92, sub-c. 1, c.
112, 1883.

except where township officers are authorized by law to sue in their name of office for the benefit of the township.

§ 94, sub-c. 1, c.
112, 1883.

§ 2633. Service, on whom. In legal proceedings against a township by name all papers shall be served on the chairman of the board of supervisors, and in case of his absence on the township clerk, and whenever any action or proceeding is commenced the chairman shall attend to the defense thereof, and lay before the electors of the township at the first township meeting a full statement of such proceedings, for their direction in regard to the defense thereof.

§ 95, sub-c. 1, c.
112, 1883.

§ 2634. Jurisdiction. No action in favor of any township shall be brought before any justice of the peace residing in such township.

§ 96, sub-c. 1, c.
112, 1883.

§ 2635. Recovery in cases of trespass. Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the township, if it appears on the trial thereof that the actual amount of injury to such township lands in consequence of such trespass exceeds the sum of twelve dollars and fifty cents, then the amount of actual damage with costs of suit shall be recovered in such action, instead of any penalty for such trespass imposed by the township meeting, and such recovery shall be a bar to all other actions for the same trespass.

§ 97, sub-c. 1, c.
112, 1883.

§ 2636. Court may partition lands, when. Whenever by judgment or decision in any action or proceeding brought to settle any controversy in relation to township commons or other lands, the common property of a township, or for the partition thereof, the rights of any township are settled and confirmed, the court in which such proceedings are had may partition such lands according to the rights of the parties.

§ 98, sub-c. 1, c.
112, 1883.

§ 2637. Payment of judgment. When a judgment is recovered against any township or against any township 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 township treasurer upon demand and the delivery to him of a certified copy of the docket of the judgment, if there is sufficient money of such township 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 township treasurer the money in his hands belonging to such township levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued, but only township property shall be liable thereon.

§ 99, sub-c. 1, c.
112, 1883.

§ 2638. When judgment is not satisfied. If judgment for the recovery of money is rendered against any township, and the judgment is not satisfied or proceedings thereon stayed by appeal or otherwise before the next annual meeting of the township, a certified copy of the docket of the judgment may be presented to such township at said annual meeting. The supervisors of the township shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be added to the tax of such township and the same certified to the county auditor and collected as other township taxes are collected.

ARTICLE 17.—TOWNSHIP CHARGES AND LEVIES.

§ 2639. **Township charges, what are.** The following shall be deemed township charges: § 100, sub-c. 1, c. 112, 1883.

1. The compensation of township officers for services rendered their respective townships.

2. Contingent expenses necessarily incurred for the use and benefit of the township.

3. The moneys authorized to be raised by the vote of the township meeting for any township purpose.

4. Each sum directed by law to be raised for any township purpose; provided, that no tax for township purposes shall exceed the amount voted to be raised at the annual township meeting as provided in subdivision 8 of section 2542.

§ 2640. **Moneys levied, how.** The moneys necessary to defray the township charges of each township shall be levied on the taxable property in such township in the manner prescribed in the chapter on revenue and taxation in this code. § 101, sub-c. 1, c. 112, 1883.

§ 2641. **Clerk to notify county auditor of levy.** It is 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 auditor 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. § 33, c. 59, 1879.

ARTICLE 18.—BOOKS AND PAPERS OF OUTGOING OFFICERS.

§ 2642. **Successor in office to demand records.** Whenever the term of any supervisor, township 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. § 102, sub-c. 1, c. 112, 1883.

§ 2643. **Same, 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. § 103, sub-c. 1, c. 112, 1883.

§ 2644. **Records to be delivered.** Each 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 under his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made. § 104, sub-c. 1, c. 112, 1883.

§ 2645. **Demand for records in case of death.** Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided of the executor or administrator of such deceased officer, and such executor or administrator shall deliver upon like oath all records, books, papers or moneys in his possession or under his control, belonging to the office held by his testator or intestate. § 105, sub-c. 1, c. 112, 1883.

ARTICLE 19. — GUIDEPOSTS.

§ 106, sub-c. 1,
c. 112, 1883. **§ 2646. Townships to erect guideposts.** Each township shall in the manner provided herein erect and maintain guideposts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travelers.

§ 107, sub-c. 1,
c. 112, 1883. **§ 2647. Report to annual meeting.** The supervisors shall submit to the electors at each annual meeting a report of all the places at which guideposts are erected and maintained within the township, 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.

§ 108, sub-c. 1,
c. 112, 1883. **§ 2648. Penalty for neglect to designate places for guideposts.** Upon the report of the supervisors the township shall determine the several places at which guideposts shall be erected and maintained, which shall be recorded in the township records. Any township 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 each month during which it neglects or refuses so to do; and in such case upon any trial for not erecting or maintaining guideposts reported to be necessary or convenient by the supervisors, the township shall be estopped from alleging that such guideposts were not necessary or convenient.

§ 109, sub-c. 1,
c. 112, 1883. **§ 2649. Character of guideposts.** At each of the places determined by the township 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 township 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 such roads lead; provided, that the inhabitants of any township may at their annual meeting agree upon some suitable substitute for such guideposts.

§ 110, sub-c. 1,
c. 112, 1883. **§ 2650. Forfeit for neglect to furnish guideposts.** Each township which neglects or refuses to erect and maintain such guideposts or some suitable substitute therefor shall forfeit annually the sum of five dollars for each guidepost 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 township treasury for the benefit of the roads and bridges of the township.

ARTICLE 20. — PUBLIC PLACES.

§ 111, sub-c. 1,
c. 112, 1883. **§ 2651. Voters shall designate.** At the annual township meeting in each year the legal voters present at each meeting shall determine and designate three places in the township as public or the most public places of such township, and that all legal notices required to be posted in three public or the most public places of a township shall be posted at such places at least, and they shall make provision for the erection and maintenance of posts on which to post notices as aforesaid in all places so designated, in which there is no sufficient natural convenience for that purpose.

ARTICLE 21. — POUNDS AND POUND MASTERS.

§ 2652. **Pounds located.** Whenever the electors of any township determine at their annual township 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. § 112, sub-c. 1, c. 112, 1883.

§ 2653. **Discontinuing pounds.** The electors of any township may at any annual township meeting discontinue any pounds therein. § 113, sub-c. 1, c. 112, 1883.

§ 2654. **Fees of pound master. Sales.** The pound master is allowed to charge and collect the following fees: 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 pound master shall give notice by posting the same in three of the most public places in the township 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 township meetings of such township are usually held; and on the day designated in such notice the pound master shall expose such animals for sale and sell the same to the highest bidder for cash, for which service he shall receive two per cent of the purchase money for each animal. § 114, sub-c. 1, c. 112, 1883.

§ 2655. **Proceeds, disposition of.** Out of the money realized from such sale the pound master shall deduct all his legal fees and charges and pay the balance if any to the chairman of the township supervisors, at the same time giving to the 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 township clerk; provided, that the supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to such 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 the township. § 114, sub-c. 1, c. 112, 1883.

ARTICLE 22. — DEBTS AND BONDS.

§ 2656. **Limit of debt of townships.** No township 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 township shall assess for township purposes more than ten mills on the dollar of taxable property for any one year. § 115, sub-c. 1, c. 112, 1883.

§ 2657. **Bonds of townships issued, how and when.** The board of supervisors of the organized townships of this state, or those that may hereafter be organized, are authorized and empowered to issue the bonds or orders of their respective townships, with coupons attached, in such amounts and at such periods as they may be directed § 116, sub-c. 1, c. 112, 1883.

by two-thirds of the legal voters present and voting at any legally called township 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 the township; provided, that nothing herein contained shall be construed to authorize the issuing of such 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 or special township 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 the township for not less than ten days previous to the time of calling the same.

§ 117, sub-c. 1,
c. 112, 1882.

§ 2658. Bonds must be sold at par. No bonds or orders issued under the authority of this article shall be issued or negotiated for less than par value, nor shall such bonds or orders or the proceeds thereof be used or appropriated for any purpose whatever other than as specified in this article.

§ 118, sub-c. 1,
c. 112, 1883.

§ 2659. Levying bond tax. The board of supervisors and its successors are authorized and it is their duty on or before the first day of September next after the date of such bonds or orders, and in each and every year thereafter on or before the first day of September, until the payment of such bonds or orders and interest is fully provided for, to levy and in due form to certify to the county auditor of the county in which said township is situated, a tax upon the taxable property of the township equal to the amount of principal and interest maturing next after such levy, and in the discretion of the board, such further sums as it shall deem expedient, not exceeding twenty per cent of such maturing bonds or orders and interest, which taxes shall be payable in money and shall constitute a fund for the payment of said bonds or orders and the interest thereon.

ARTICLE 23.—REFUNDING BONDS.

§ 2660. To be issued, when. Each organized township in this state is authorized and empowered by and through its board of supervisors, when in the judgment of such board it is deemed for the best interests of the township, to issue its negotiable bonds in the name of such township for the sole purpose of refunding any outstanding bonded indebtedness of such township.

§ 2661. Issuance, how determined. Denomination. Form. The necessity of issuing and negotiating bonds under the provisions of this article shall be determined by the board of supervisors of such township. Such bonds shall be in denominations of not more than one thousand dollars nor less than one hundred dollars, shall bear the date of their issue and shall be made payable to the purchaser or bearer, and be payable in not less than five nor more than fifteen years from their date; and shall bear interest at a rate not higher than the bonds refunded and shall have coupons attached for each interest payment; such bonds and coupons shall be signed by the chairman of the board of supervisors and shall be attested by the

township clerk. Each bond shall state on its face that it is issued in accordance with this article. Such bonds may be made payable at such place as may be agreed upon.

§ 2662. **Record to be kept.** A record of each bond so issued shall be kept by the township clerk, showing the number of each bond, its date, amount, rate of interest, when and where payable, the amount received therefor, to whom sold and how the proceeds were disposed of.

§ 2663. **Annual tax to pay principal and interest.** At or before the time of issuing any bonds pursuant to the provisions of this article, it shall be the duty of the board of supervisors to provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due.

§ 2664. **Payment of at maturity. Cancellation.** When such bonds and the coupons thereto attached mature it shall be the duty of the township treasurer to pay the same on presentation out of any funds in his hands applicable thereto; and he shall then properly cancel the same.

ARTICLE 24.—IRRIGATION.

§ 2665. **Petition. Election.** Whenever ten legal voters of any organized township petition the township board fifteen days previous to any annual township meeting to submit the question of irrigation, by building dams to create ponds or reservoirs on any of the creeks or coulees in the township, it shall be the duty of the board to submit the question to the voters at the next annual township meeting, and the township clerk shall cause three notices to be posted specifying the place and nature of such proposed improvements. § 1, c. 43, 1890. am'd.

§ 2666. **Tax.** Whenever two-thirds of the legal voters of any organized township in this state, at their annual township meeting agree that it is advisable and for the public good that certain specified creeks or coulees should be improved to increase the water supply and for the purpose of irrigation, it shall be lawful for such voters to levy a tax upon said township, to be expended in building dams to create ponds and reservoirs, by and under the direction of the board of supervisors of the township; provided, such improvements shall be wholly in said township; and no lands shall be flooded without the consent of the owner or without just compensation therefor, which compensation shall be determined as provided in the chapter on eminent domain in the code of civil procedure. § 2, c. 43, 1890. am'd.

§ 2667. **Maximum levy.** The tax authorized to be levied by the last section shall not exceed two mills on the dollar of the assessed valuation of the township. § 3, c. 43, 1890.

ARTICLE 25.—CONTRACT SYSTEM OF HIGHWAY LABOR.

§ 2668. **Township boards have supervision over.** The several township boards of organized townships in the state shall have general supervision over the roads, highways and bridges throughout their several townships. § 1, c. 91, 1895.

§ 2669. **Plans and specifications for all work.** The several township boards on being petitioned by a majority of the legal voters of such township, as shown by the votes cast at the last annual § 2, c. 91, 1895.

township meeting, shall at the next annual meeting cause a vote to be taken by ballot on which shall be written or printed the words "for contract system," "against contract system," and if a majority of the votes cast are in favor of the contract system then the township board shall at the next meeting succeeding the annual meeting advertise in any one of the county papers for bids for two successive weeks for the improvement and repairing of highways and bridges in its township, in the following manner:

1. The board shall furnish plans and specifications for all work and improvements to be done and performed in the several townships, which shall be filed in the office of the township clerk.

2. It shall at the time of advertising for bids give at least ten days notice, to be posted in three conspicuous places in said township that bids will be received at a time and place mentioned in said notices, and said contracts shall be let to the lowest bidder in accordance with such plans and specifications as are furnished by said board, and the said board shall require upon the letting of such contract, or contracts, a good and sufficient bond for the faithful performance of the work to be done and performed in said contract, and said board shall have authority to reject any and all bids.

§ 3, c. 91, 1895. **§ 2670. Annual township meeting. Tax fixed.** At the annual township meeting in each year the amount of tax for road purposes shall be voted upon and fixed by township, which shall not exceed the sum of eighty cents on each one hundred dollars of assessed valuation of property, both real and personal.

§ 4, c. 91, 1895. **§ 2671. Special fund.** All moneys raised in pursuance of the provisions hereof shall constitute a special fund for the improvement of highways and shall be collected, paid out and expended in the manner provided for warrants drawn on the treasurer of each township for general expenses thereof, and such fund shall be kept separate and shall not be used for any other purpose whatsoever.

§ 5, c. 91, 1895. **§ 2672. Assessments, how collected.** Upon failure to pay any tax assessed for the purposes herein named the same shall become delinquent and shall be collected in the same manner as other taxes.

§ 6, c. 91, 1895. **§ 2673. Road machinery.** In townships owning road machinery the township boards shall have authority to make such disposition of the same as in its discretion is best for the interests of the township, or it may purchase or lease such machinery as may be necessary for the purpose of carrying out the provisions hereof and the performance of all contracts in reference thereto.

ARTICLE 26. — MISCELLANEOUS.

§ 119, sub-c. 1, c. 112, 1883. **§ 2674. Officers not to be interested in contracts.** No township officer shall become a party to or be 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 shall constitute malfeasance in office which will subject the officer so offending to be removed from office.

§ 120, sub-c. 1, c. 112, 1883. **§ 2675. Election districts.** Each township organized under this chapter, or any law heretofore in force, constitutes an election district.

§ 2676. **City to have same powers as township.** Nothing in this chapter contained shall in any way apply to any portion of the state 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 townships in the manner prescribed by law. § 121, sub-c. 1, c-112, 1883.

§ 2677. **Constables, powers of.** 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. § 95, c. 59, 1879.

§ 2678. **To provide for 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 may adopt such regulations as may be necessary in relation thereto. § 39, c. 23, Pol.C.

§ 2679. **Notice to be given.** Any township providing such place of confinement shall cause notice thereof to be published in the newspaper having the largest circulation in such township, if there is any, or cause the township clerk to post notice thereof in three of the most public places in such township. § 40, c. 23, Pol.C.

§ 2680. **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. § 41, c. 23, Pol.C.

CHAPTER 32.

MISCELLANEOUS PROVISIONS.

§ 2681. **Code not retroactive unless so declared.** No part of this code is retroactive unless expressly so declared.

§ 2682. **Rule of construction of code.** The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

§ 2683. **Same.** The provisions of this code, so far as they are substantially the same as existing statutes must be construed as continuations thereof, and not as new enactments.

§ 2684. **Offices under acts repealed by code are continued, when.** All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislative assembly, and excepting offices filled by appointment.

§ 2685. **Same.** When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the codes, such office ceases at the time the codes take effect.

§ 2686. **Pending actions or proceedings not affected by code.** No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

§ 2687. **Limitations, how reckoned.** When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation of time is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code.

§ 2688. **This act, how referred to.** This act, whenever cited, enumerated, referred to or amended may be designated simply as the political code, adding when necessary, the number of the section.

CIVIL CODE.

CHAPTER 1.

GENERAL DEFINITIONS AND DIVISIONS.

§ 2689. **Title.** This act shall be known as the civil code of the state of North Dakota. § 1, Civil C.

§ 2690. **Origin of law.** Law is a rule of property and of conduct prescribed by the sovereign power. § 2, Civil C.

§ 2691. **Expression of law.** The will of the sovereign power is expressed: § 3, Civil C. am'd.

1. By the constitution of the state.
2. By the statutes of the state.
3. By the ordinances of other and subordinate legislative bodies.
4. By the decisions of the tribunals enforcing those rules, which, though not enacted, form what is known as customary or common law.

§ 2692. **Common law divided.** The common law is divided into: § 4, Civil C.

1. Public law, or the law of nations.
2. Domestic or municipal law.

§ 2693. **Evidence of same.** The evidence of the common law is found in the decisions of the tribunals. § 5, Civil C.

§ 2694. **Codes exclude common law.** In this state there is no common law in any case where the law is declared by the codes. § 6, Civil C.

§ 2695. **Classification of civil rights.** All original civil rights are either: § 7, Civil C.

1. Rights of person; or,
2. Rights of property.

§ 2696. **Rights, how waived.** Rights of property and of person may be waived, surrendered or lost by neglect in the cases provided by law. § 8, Civil C.

§ 2697. **Code divisions.** This code has four general divisions: § 9, Civil C.

1. The first relates to persons.
2. The second, to property.
3. The third, to obligations.
4. The fourth contains general provisions relating to persons, property and obligations.

CHAPTER 2.

PERSONS.

- § 10, Civil C. **§ 2698. Minority defined.** Minors are:
1. Males under twenty-one years of age.
 2. Females under eighteen years of age.
- The periods thus specified must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.
- § 11, Civil C. **§ 2699. Adults.** All other persons are adults.
- § 12, Civil C. **§ 2700. Unborn child.** A child conceived, but not born, is to be deemed an existing person so far as may be necessary for its interests in the event of its subsequent birth.
- § 15, Civil C. **§ 2701. Minor's disability.** A minor cannot give a delegation of power, nor under the age of eighteen make a contract relating to real property or any interest therein, or relating to any personal property not in his immediate possession or control.
- § 16, Civil C. **§ 2702. Contract subject to disaffirmance.** A minor may make any contract other than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this chapter and subject to the provisions of the chapters on marriage and on master and servant.
- § 17, Civil C. **§ 2703. Minor's contracts.** In all cases other than those specified in sections 2704 and 2705 the contract of a minor, if made while he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within one year's time afterwards; or in case of his death within that period, by his heirs or personal representatives; and if the contract is made by the minor while he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest.
- § 18, Civil C. **§ 2704. Cannot disaffirm contracts for necessities.** A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family entered into by him when not under the care of a parent or guardian able to provide for him or them.
- § 19, Civil C. **§ 2705. Nor statutory contracts.** A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.
- § 20, Civil C. **§ 2706. Idiot's powers.** A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.
- § 21, Civil C. **§ 2707. When idiot's contract subject to rescission.** A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined is subject to rescission as provided in the chapter of rescission of this code.
- § 22, Civil C. **§ 2708. Cannot contract after incapacity determined.** After his incapacity has been judicially determined a person of unsound mind can make no conveyance or other contract, nor delegate

any power, nor waive any right, until his restoration is judicially determined. But if actually restored to capacity he may make a will, though his restoration is not thus determined.

§ 2709. **Minor liable for wrongs.** A minor or a person of unsound mind of whatever degree is civilly liable for a wrong done by him in like manner as any other person. § 23, Civil C.

§ 2710. **When subjected to exemplary damages.** A minor or person of unsound mind cannot be subjected to exemplary damages unless at the time of the act he was capable of knowing that it was wrongful. § 24, Civil C.

§ 2711. **Rights of action.** A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must be appointed to conduct the same. § 25, Civil C.

§ 2712. **Indian rights. Disabilities.** Indians resident within this state have the same rights and duties as other persons, except that: § 26, Civil C. am'd.

1. They cannot vote or hold office except as prescribed in subdivision three of section 121 of the constitution of this state.

2. They cannot grant, lease or incumber Indian lands except in the cases provided by law.

CHAPTER 3.

PERSONAL RIGHTS.

§ 2713. **General personal rights.** Besides the personal rights mentioned or recognized in the political code every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation and from injury to his personal relations. § 27, Civil C.

§ 2714. **Defamation.** Defamation is effected by: § 28, Civil C.

1. Libel; or,
2. Slander.

§ 2715. **Libel defined.** Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. § 29, Civil C.

§ 2716. **Slander.** Slander is a false and unprivileged publication, other than libel, which: § 30, Civil C.

1. Charges any person with crime or with having been indicted, convicted, or punished for crime.

2. Imputes to him the present existence of an infectious, contagious or loathsome disease.

3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business, that has a natural tendency to lessen its profit.

4. Imputes to him impotence or want of chastity; or,

5. Which, by natural consequence causes actual damage.

§ 31, Civil C.

§ 2717. Privileged communications. A privileged communication is one made:

1. In the proper discharge of an official duty.
2. In any legislative or judicial proceeding, or in any other proceeding authorized by law.
3. In a communication without malice to a person interested therein by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.
4. By a fair and true report without malice of a judicial, legislative or other public official proceeding, or of anything said in the course thereof.

In the cases provided for in subdivisions three and four of this section malice is not inferred from the communication or publication.

§ 32, Civil C.

§ 2718. Offenses against personal relation. The rights of personal relation forbid:

1. The abduction of a husband from his wife or of a parent from his child.
2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master.
3. The seduction of a wife, daughter, orphan sister or servant; and,
4. Any injury to a servant which affects his ability to serve his master.

§ 33, Civil C.

§ 2719. Force to protect. Any necessary force may be used to protect from wrongful injury the person or property of one's self or of a wife, husband, child, parent or other relative or member of one's family, or of a ward, servant, master or guest.

CHAPTER 4.

MARRIAGE CONTRACT.

§ 1, c. 91, 1890.

§ 2720. Marriage defined. Marriage is a personal relation arising out of a civil contract to which the consent of the parties thereto is essential, but the marriage relation may be entered into, maintained, annulled or dissolved only as provided by law.

§ 2, c. 91, 1890.

§ 2721. Age of consent to marriage. Any unmarried male of the age of sixteen years or upwards, and any unmarried female of the age of thirteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage; provided, that if the male is under twenty-one years or the female under eighteen years of age the license provided in this chapter shall not be issued without the consent of the parent or guardian, if there is any.

§ 3, c. 91, 1890.
am'd.

§ 2722. Who disqualified to marry. Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, between uncles and nieces, aunts and nephews, or cousins of the first degree of the half as well as the whole blood, are declared to be incestuous and absolutely void. This section shall apply to illegitimate as well as legitimate children and relations.

§ 2723. **When marriage voidable.** A marriage contracted by a person having a former husband or wife living, if the former marriage has not been annulled or dissolved, is illegal and void from the beginning unless such former husband or wife was absent and believed by such person to be dead for a period of five years immediately preceding. § 6, c. 91, 1890. am'd.

§ 2724. **Who may solemnize marriages. License.** Marriages may be solemnized by all judges of courts of record within their respective jurisdictions; by justices of the peace within their respective jurisdictions; by ordained ministers of the gospel and priests of every church, but marriages solemnized in the society of Friends or Quakers according to the form used in their meetings shall be valid. No such person shall solemnize any marriage until the parties thereto shall produce a license, issued by a county judge of the county in which such ceremony is to be performed, or if such county is unorganized, of the county to which it is attached for judicial purposes. When any person authorized by law shall solemnize a marriage he shall fill out and sign a certificate following the marriage license on the blank form prescribed by law, giving his official title, or if a minister of the gospel or priest, the ecclesiastical body with which he is connected and return such license and certificate to the county judge of the county within thirty days thereafter. Such certificate shall be signed by two witnesses to the marriage ceremony in addition to the signature of the person who solemnized the marriage. § 7, c. 91, 1890. am'd.

§ 2725. **Marriage license, how obtained.** The county judge of each county in this state, when applied to by any person for a marriage license, shall inquire of such person upon oath relative to the legality of such contemplated marriage and he may examine other witnesses upon oath if deemed best; and if any of the persons intending to marry are under age said judge shall require the consent of the parent or guardian, if there is any, personally given, or a certificate of consent signed by such parent or guardian and attested by two witnesses, one of whom shall appear before such judge and make oath that he saw such parent or guardian sign such certificate; and if said judge shall be satisfied there is no legal impediment thereto, he shall issue and sign such marriage license and affix his seal, in the form prescribed by law. § 8, c. 91, 1890.

§ 2726. **License and certificate.** The marriage license and certificate of the person solemnizing the marriage shall be upon one blank form substantially as follows: § 9, c. 91, 1890.

MARRIAGE LICENSE.

State of North Dakota, }
County of..... } ss.

To any person authorized by law to perform the marriage ceremony, greeting:

You are hereby authorized to join in marriage....., of
....., aged and, of.....,
aged; and of this license and your certificate you will make
due return to my office within thirty days.

Dated at this day of 189..

[Seal.]

County Judge.

CERTIFICATE OF MARRIAGE.

I hereby certify that the persons named in the foregoing license were by me joined in marriage at, county of, state of North Dakota, on the day of, 189..

In presence of

..... } Witnesses.

§ 10, c. 91, 1890. **§ 2727. Record to be kept by county court.** The county judge shall keep a marriage record book, in which he shall keep a correct copy of all marriage licenses issued by him; and when a license is returned with the certificate of the person performing the marriage ceremony properly filled out and signed, he shall also record such certificate immediately following the record of such license; and for each license and the record herein required he shall be entitled to a fee of one dollar to be paid by the party applying for the same.

§ 13, c. 91, 1890. **§ 2728. Indian marriage contracts valid.** Indians contracting marriage according to the Indian custom and cohabiting as man and wife shall be deemed legally married.

§ 14, c. 91, 1890. **§ 2729. Marriages valid where contracted, valid in this state.** All marriages contracted outside of this state, which are valid according to the laws of the state or country where contracted, shall be valid in this state.

§ 15, c. 91, 1890.
am'd. **§ 2730. Certified record is evidence.** The books of record of marriage licenses issued and certificates returned kept by the county judge of any county, or copies of such entries certified by such judge under the seal of the court, shall be received as evidence in all courts.

§ 54, Civil C.
am'd. **§ 2731. Causes for annulling marriage.** A marriage may be annulled by an action in the district court to obtain a decree of nullity for any of the following causes existing at the time of the marriage:

1. When the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent and such marriage was contracted without the consent of his or her parent or guardian, unless after attaining the age of consent such party freely cohabited with the other as husband or wife.

2. When the former husband or wife of either party was living and the marriage with such former husband or wife was then in force.

3. When either party was of unsound mind, unless such party after coming to reason freely cohabited with the other as husband or wife.

4. When the consent of either party was obtained by fraud, unless such party afterwards with full knowledge of the facts constituting the fraud freely cohabited with the other as husband or wife.

5. When the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. When either party was at the time of the marriage physically incapable of entering into the marriage state and such incapacity continues and appears to be incurable.

§ 2732. Limitation of action. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows: § 55, Civil C. am'd.

1. For causes mentioned in subdivision one, by the party to the marriage, who was married under the age of legal consent, within four years after arriving at the age of consent, or by his or her parent or guardian at any time before such party has arrived at the age of legal consent.

2. For causes mentioned in subdivision two, by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three, by the party injured, or a relative or guardian of the party of unsound mind at any time before the death of either party.

4. For causes mentioned in subdivision four, by the party injured within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivisions five and six, by the injured party within four years after the marriage.

§ 2733. Children legitimate. When a marriage is annulled children begotten before the judgment are legitimate and succeed to the estate of both parents. § 56, Civil C. am'd.

§ 2734. Custody of children. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent and may also provide for their education and maintenance out of the property of the guilty party. § 57, Civil C.

§ 2735. Effect of judgment. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them. § 58, Civil C.

CHAPTER 5.

DISSOLUTION OF MARRIAGE.

ARTICLE 1. — CAUSES FOR GRANTING DIVORCE.

§ 2736. Marriage, how dissolved. Marriage is dissolved only: § 59, Civil C. am'd.

1. By the death of one of the parties; or,
2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

§ 2737. Causes for divorce. Divorces may be granted for any of the following causes: § 60, Civil C.

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction for felony.

§ 2738. Adultery defined. Adultery within the meaning of this article is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. § 60, Civil C.

§ 60, Civil C. **§ 2739. Extreme cruelty defined.** Extreme cruelty is the infliction by one party to the marriage of grievous bodily injury or grievous mental suffering upon the other.

§ 60, Civil C. **§ 2740. Desertion defined.** Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

6. Consent to a separation is a revocable act and if one of the parties afterwards in good faith seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.

8. A husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

9. If the place or mode of living selected by the husband is unreasonable and grossly unfit and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 60, Civil C. **§ 2741. Willful neglect defined.** Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy or dissipation.

§ 60, Civil C. am'd. **§ 2742. Habitual intemperance defined.** Habitual intemperance is that degree of intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine or other like narcotic drugs, which disqualifies the person a great portion of the time from properly attending to business or which would reasonably inflict a course of great mental anguish upon the innocent party.

§ 60, Civil C. 1, c. 57, 1881. **§ 2743. Duration of offenses as ground of divorce.** Willful desertion, willful neglect or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE 2.—CAUSES FOR DENYING DIVORCE.

§ 2744. **When divorce will be denied.** Divorces must be § 61, Civil C.
denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

§ 2745. **Connivance defined.** Connivance is the corrupt § 61, Civil C.
consent of one party to the commission of the acts of the other con-
stituting the cause of divorce. Corrupt consent is manifested by
passive permission with intent to connive at or actively procure the
commission of the acts complained of.

§ 2746. **Collusion defined.** Collusion is an agreement between § 61, Civil C.
the husband and wife that one of them shall commit, or appear to
have committed, or be represented in court as having committed, acts
constituting a cause of divorce for the purpose of enabling the other
to obtain a divorce.

§ 2747. **Condonation defined.** Condonation is the conditional § 61, Civil C.
forgiveness of a matrimonial offense constituting a cause of divorce.

§ 2748. **Requisites of condonation.** The following require- § 61, Civil C.
ments are necessary to condonation:

1. A knowledge on the part of the condoner of the facts consti-
tuting the cause of divorce.
2. Reconciliation and remission of the offense by the injured
party.
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent, that the forgiving party
must be treated with conjugal kindness. When the cause of divorce
consists of a course of offensive conduct, or arises in cases of cruelty
from successive acts of ill treatment, which may aggregately consti-
tute the offense, cohabitation or passive endurance or conjugal kind-
ness shall not be evidence of condonation of any of the acts consti-
tuting such cause, unless accompanied by an express agreement to
condone. In such cases condonation can be made only after the cause
of divorce has become complete as to the acts complained of. A
fraudulent concealment by the condonee of facts constituting a differ-
ent cause of divorce from the one condoned and existing at the time
of condonation avoids such condonation.

§ 2749. **Revocation of condonation.** Condonation is revoked § 61, Civil C.
and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other
cause of divorce; or,
2. When the condonee is guilty of great conjugal unkindness, not
amounting to a cause of divorce, but sufficiently habitual and gross
to show that the conditions of condonation had not been accepted in
good faith or not fulfilled.

§ 2750. **Recrimination defined.** Recrimination is a showing § 61, Civil C.
by the defendant of any cause of divorce against the plaintiff in bar
of the plaintiff's cause of divorce. Condonation of a cause of divorce
shown in the answer as a recriminatory defense is a bar to such defense,
unless the condonation is revoked as above provided, or two years
have elapsed after the condonation and before the accruing or com-

- pletion of the cause of divorce against which the recrimination is shown.
- § 62, Civil C. **§ 2751. Adultery by husband.** When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.
- § 63, Civil C. **§ 2752. By wife. Legitimacy.** When a divorce is granted for the adultery of the wife the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case. In every such case all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.
- § 65, Civil C.
1, c. 29, 1881. **§ 2753. Time limited.** A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.
- § 66, Civil C.
am'd. **§ 2754. Only statutory limitations.** There are no limitations of time for commencing actions for divorce except such as are contained in the foregoing section.
- § 67, Civil C. **§ 2755. Term of residence.** A divorce must not be granted unless the plaintiff has in good faith been a resident of the state ninety days next preceding the commencement of the action.
- § 68, Civil C. **§ 2756. Presumption of domicile.** In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not apply. After separation each party may have a separate domicile, depending for proof upon actual residence and not upon legal presumptions.
- § 69, Civil C. **§ 2757. Affirmative proof required.** No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must in addition to any statement or finding of the referee require proof of the facts alleged.

ARTICLE 3. — GENERAL PROVISIONS.

- § 70, Civil C. **§ 2758. Maintenance.** Though a judgment of divorce is denied the court may in an action for divorce provide for the maintenance of a wife and her children, or any of them, by the husband.
- § 71, Civil C. **§ 2759. Alimony pending action.** While an action for divorce is pending, the court may in its discretion require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.
- § 72, Civil C. **§ 2760. Custody of children.** In an action for divorce the court may before or after judgment give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper and may at any time vacate or modify the same.
- § 73, Civil C. **§ 2761. Support.** When a divorce is granted for an offense of the husband the court may compel him to provide for the maintenance

nance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life or for a shorter period as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

§ 2762. **Security. Separate estate. Homestead.** The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter and may enforce the same by the appointment of a receiver or by any other remedy applicable to the case. But when the wife has a separate estate sufficient to give her a proper support, the court in its discretion may withhold any allowance to her out of the separate property of the husband. The court in rendering a decree of divorce may assign the homestead to the innocent party either absolutely or for a limited period according to the facts in the case and in consonance with the law relating to homesteads. The disposition of the homestead by the court and all orders and decrees touching the alimony and maintenance of the wife and for the custody, education and support of the children as above provided are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. § 74, CIVIL C.

CHAPTER 6.

HUSBAND AND WIFE.

§ 2763. **Mutual relations.** Husband and wife contract toward each other obligations of mutual respect, fidelity and support. § 75, CIVIL C.

§ 2764. **Head of family.** The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto. § 76, CIVIL C.

§ 2765. **Duty to support.** The husband must support himself and his wife out of his property or by his labor. The wife must support the husband when he has not deserted her out of her separate property, when he has no separate property and he is unable from infirmity to support himself. § 77, CIVIL C.

§ 2766. **Separate property. Dwelling.** Except as mentioned in section 2765, neither the husband nor the wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. § 78, CIVIL C.

§ 2767. **Wife's rights and capacity.** The wife after marriage has with respect to property, contracts and torts the same capacity and rights and is subject to the same liabilities as before marriage and in all actions by or against her she shall sue and be sued in her own name.

§ 2768. **Cannot alter relations.** A husband and wife cannot by any contract with each other alter their marital relations, except that they may agree in writing to an immediate separation and may make provision for the support of either of them and of their children during such separation. § 80, CIVIL C. am'd.

§ 2769. **Separation.** The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section. § 81, CIVIL C.

§ 83, Civil C.
§ 2, c. 52, 1893.

§ 2770. Separate and mutual rights. Neither the husband nor the wife, as such, is answerable for the acts of the other.

2. The earnings of the wife are not liable for the debts of the husband and the earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

3. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

4. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

5. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

§ 84, Civil C.

§ 2771. Wife's necessities. If the husband neglects to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may in good faith supply her with articles necessary for her support and recover the reasonable value thereof from the husband.

§ 85, Civil C.

§ 2772. Abandonment. Separation. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him; nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement.

§ 1, c. 68, 1883.

§ 2773. Transfer of property when abandoned. In case the husband or wife abandons the other and removes from the state and is absent therefrom for one year without providing for the maintenance and support of his or her family, or is sentenced to imprisonment either in the county jail or penitentiary for the period of one year or more, the district court of the county or judicial subdivision where the husband or wife so abandoned, or not in prison, resides may, on application by affidavit of such husband or wife, setting forth fully the facts, supported by such other testimony as the court may deem necessary, authorize him or her to manage, control, sell or incur the property of the said husband or wife for the support and maintenance of the family and for the purpose of paying debts contracted prior to such abandonment or imprisonment. Notice of such proceedings shall be given the opposite party and shall be served as summons is served in ordinary actions.

§ 2, c. 68, 1883.

§ 2774. Contracts binding on both. All contracts, sales or incumbrances made either by the husband or the wife by virtue of the power contemplated and granted by order of the court as provided in the preceding section, shall be binding on both, and during such absence or imprisonment the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued thereon according to statute. No suit or proceedings shall abate or be in anywise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other.

§ 3, c. 68, 1883.

§ 2775. When order set aside. The husband or wife affected by the proceedings contemplated in the two preceding sections may have the order or decree of the court set aside or annulled by affidavit of such party, setting forth fully the facts and supported by such

other testimony as the court shall deem proper. Notice of such proceedings to set aside and annul such order must be given the person in whose favor the same was granted and shall be served as summons is served in ordinary actions. The setting aside of such decree or order shall in no wise affect any act done thereunder.

CHAPTER 7.

PARENT AND CHILD.

§ 2776. **Legitimacy presumed.** All children born in wedlock are presumed to be legitimate. § 86, Civil C.

§ 2777. **Children born after dissolution of marriage or before wedlock.** All children of a woman who has been married born within ten months after the dissolution of the marriage are presumed to be legitimate children of that marriage. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. § 87, Civil C.

§ 2778. **Who may dispute presumption.** The presumption of legitimacy can be disputed only by the husband or wife or the descendant of one or both of them. Illegitimacy in such case may be proved like any other fact. § 88, Civil C.

§ 2779. **Both parents support children.** The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability. § 89, Civil C.

§ 2780. **Who entitled to the custody of a child.** The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person except the mother without her written consent, unless she has deserted him or is living separate from him by agreement. If the father is dead or is unable or refuses to take the custody or has abandoned his family the mother is entitled thereto. § 90, Civil C.

§ 2781. **Of illegitimate child.** The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings. § 91, Civil C.

§ 2782. **Allowance to parent.** The district court may direct an allowance to be made to a parent of a child out of its property for its past or future support and education on such conditions as may be proper, whenever such direction is for its benefit. § 92, Civil C.

§ 2783. **Control of property.** The parent as such has no control over the property of the child. § 93, Civil C.

§ 2784. **Parental abuse.** The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relatives within the third degree, or by the officers of the poor where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced. § 94, Civil C.

§ 2785. **When parent's authority ceases.** The authority of a parent ceases: § 95, Civil C.

1. Upon the appointment by a court of a guardian of the person of the child;

2. Upon the marriage of the child; or,
3. Upon its attaining majority.

§ 96, Civil C.
am'd.

§ 2786. Action for support of child. If a parent chargeable with the support of a child dies, leaving it chargeable upon the county and leaving an estate sufficient for its support, the county commissioners of the county in the name of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees and next of kin of the parent.

§ 97, Civil C.

§ 2787. Support of poor. It is the duty of the father, the mother and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding.

§ 98, Civil C.

§ 2788. Neglect of child. If a parent neglects to provide articles necessary for his child, who is under his charge, according to his circumstances, a third person may in good faith supply such necessities and recover the reasonable value thereof from the parent.

§ 99, Civil C.

§ 2789. Parent when not liable. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 100, Civil C.

§ 2790. Support of stepchildren. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent and when such is the case, they are not liable to him for their support, nor he to them for their services.

§ 101, Civil C.

§ 2791. After majority. When a child after attaining majority continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

§ 102, Civil C.

§ 2792. Child's earnings. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

§ 103, Civil C.

§ 2793. Wages paid. The wages of a minor employed in service may be paid to him or her until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

§ 104, Civil C.

§ 2794. Change of residence. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

§ 105, Civil C.

§ 2795. Not liable for acts of other. Neither parent nor child is answerable as such for the act of the other.

§ 106, Civil C.
am'd.

§ 2796. Custody of father and mother. The husband and father as such has no rights superior to those of the wife and mother in regard to the care, custody, education and control of the children of the marriage, while such husband and wife live separate and apart from each other; and when they so live in a state of separation without being divorced, the district court or judges thereof upon application of either may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award

the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules prescribed in section 2817.

CHAPTER 8.

ADOPTION.

§ 2797. **Adoption of minor.** Any minor child may be adopted by any adult person in the cases and subject to the rules prescribed in this chapter. § 107, Civil C.

§ 2798. **Relative age limited.** A person adopting a child must be at least ten years older than the person adopted. § 108, Civil C.

§ 2799. **Consent of husband or wife.** A married man not lawfully separated from his wife cannot adopt a child without the consent of his wife, nor can a married woman not thus separated from her husband without his consent, provided the husband or wife not consenting is capable of giving such consent. § 109, Civil C.

§ 2800. **Consent of parents or guardian.** A legitimate child cannot be adopted without the consent of its parents if living, nor an illegitimate child without the consent of its mother if living, except that such consent is not necessary from a parent deprived of civil rights or adjudged guilty of adultery or cruelty and for either cause divorced, or from a parent adjudged to be an habitual drunkard or of unsound mind, or who has been judicially deprived of the custody of the child on account of cruelty or neglect. In case the child has no parent living or the consent of the parent living is not necessary under the provisions of this section, consent to the adoption may be given by the guardian, if the child has a guardian, and if there is no guardian, consent to the adoption may be given by the person having the custody of the child or by the next of kin of the child residing in this state. ¹⁸⁹⁶ § 110, Civil C. 2, c. 4, 1891. am'd.

§ 2801. **When child must consent.** The consent of a child, if over the age of ten years, is necessary to its adoption. ¹⁸⁹⁶ § 111, Civil C. 3, c. 4, 1891. am'd.

§ 2802. **Petition for adoption.** Any inhabitant of this state may petition the district court in the county of his residence for leave to adopt a child not his own, and if desired for a change of the child's name; but such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein. § 1, c. 4, 1891.

§ 2803. **Proceedings on hearing. Decree.** If upon the hearing of the petition so presented and consented unto as aforesaid, the court shall be satisfied of the identity and relations of the persons concerned, and that the petitioner is or, in case of husband and wife, that the petitioners are of sufficient ability to bring up the child and to furnish him suitable nurture and education and that it is fit and proper that the petition for leave to adopt such child be granted, a decree shall be made, setting forth the facts and ordering that from and after the date of the decree the child shall be deemed and taken to be the child of the petitioner or petitioners, and the court may if desired in and by the same decree change the name of such child. § 5, c. 4, 1891.

§ 2804. **Status of adopted child.** The child so adopted shall be deemed, as respects all legal consequences and incidents of the ¹⁸⁹⁶ § 6, c. 4, 1891. am'd.

natural relation of parent and child, the child of such parent or parents by adoption the same as if he had been born to them in lawful wedlock.

§ 7. c. 4, 1891.

§ **2805. Effect of decree.** The natural parents of such child shall be deprived by the decree aforesaid of all legal rights respecting the child and such child shall be free from all obligations of maintenance and obedience respecting his natural parents.

§ 116, Civil C.

§ **2806. Illegitimate child.** The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such with the consent of his wife, if he is married, into his family, and otherwise treating it as if it was a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

CHAPTER 9.

GUARDIAN AND WARD.

§ 117, Civil C.

§ **2807. Guardian defined.** A guardian is a person appointed to take care of the person or property of another.

§ 118, Civil C.

§ **2808. Ward defined.** The person over whom, or over whose property a guardian is appointed, is called his ward.

§ 119, Civil C.

§ **2809. Guardians classified.** Guardians are either:

1. General; or,
2. Special.

§ 120, Civil C.

§ **2810. General guardian.** A general guardian is a guardian of the person, or of all the property of the ward within this state, or of both.

§ 121, Civil C.

§ **2811. Special guardian.** Every other is a special guardian.

§ 122, Civil C.

§ **2812. How guardian appointed.** A guardian of the person or estate or of both of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child is legitimate, by the father with the written consent of the mother or by either parent, if the other is dead or incapable of consent.

2. If the child is illegitimate, by the mother.

§ 123, Civil C.

§ **2813. No power without appointment.** No person, whether a parent or otherwise, has any power as a guardian of property except by appointment as hereinafter provided.

§ 124, Civil C.

§ **2814. Jurisdiction in county court.** A guardian of the person or property or both of a person residing in this state, who is a minor or of unsound mind, may be appointed in all cases, other than those named in section 2812, by the county court as provided in the probate code.

§ 125, Civil C.

§ **2815. Guardian of nonresident.** A guardian of the property within this state of a person not residing therein who is a minor or of unsound mind may be appointed by the county court.

§ 126, Civil C.

§ **2816. Court appointing has exclusive jurisdiction.** In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

§ 2817. Rules in appointing. In awarding the custody of a minor or in appointing a general guardian the court or judge is to be guided by the following considerations: § 127, Civil C.

1. By what appears to be for the best interests of the child in respect to its temporal and its mental and moral welfare; and if the child is of sufficient age to form an intelligent preference, the court or judge may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor or business, then to the father.

§ 2818. Preference between two equally entitled. Of two persons equally entitled to the custody in other respects preference is to be given as follows: § 127, Civil C.

1. To a parent.
2. To one who was indicated by the wishes of a deceased parent.
3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.
4. To a relative.

§ 2819. Guardian's power. A guardian appointed by a court has power over the person and property of the ward unless otherwise ordered. § 123, Civil C.

§ 2820. Power of guardian of the person. A guardian of the person is charged with the custody of the ward and must look to his support, health and education. He may fix the residence of the ward at any place within the state, but not elsewhere without the permission of the court. § 129, Civil C.

§ 2821. Of the property. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property nor make any sale of such property without the order of the county court, but must, so far as it is in his power, maintain the same with its buildings and appurtenances out of the income or other property of the estate and deliver it to the ward at the close of his guardianship in as good condition as he received it. § 130, Civil C.

§ 2822. Nature of the relation. The relation of guardian and ward is confidential and is subject to the provisions of the chapter on trusts. § 131, Civil C.

§ 2823. Guardian controlled by court. In the management and disposition of the person or property committed to him a guardian may be regulated and controlled by the court. § 132, Civil C.

§ 2824. Joint guardians. On the death of one of two or more joint guardians the power continues to the survivor until a further appointment is made by the court. § 133, Civil C.

§ 2825. Causes for removal. A guardian may be removed by the county court for any of the following causes: § 134, Civil C.

1. For abuse of his trust.
2. For continued failure to perform its duties.
3. For incapacity to perform its duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his duty.
6. For removal from the state.
7. In the case of a guardian of the property, for insolvency; or,

8. When it is no longer proper that the ward should be under guardianship.
- § 135, Civil C. **§ 2826. When power of parental guardian superseded.** The power of a guardian appointed by a parent is superseded:
1. By his removal as provided in the last section; or,
 2. By the solemnized marriage of the ward; or,
 3. By the ward's attaining majority.
- § 136, Civil C. **§ 2827. When power of court guardian suspended.** The power of a guardian appointed by a court is suspended only:
1. By order of the court; or,
 2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,
 3. The guardianship over the person of the ward, by the marriage of the ward.
- § 137, Civil C. **§ 2828. Ward's power on majority.** After a ward has come to his majority he may settle accounts with his guardian and give him a release, which is valid if obtained fairly and without undue influence.
- § 138, Civil C. **§ 2829. When discharge granted.** A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.
- § 139, Civil C. **§ 2830. Asylum for persons of unsound mind.** A person of unsound mind may be placed in an asylum for such persons upon the order of the county court of the county in which he resides, as follows:
1. The court must be satisfied by the oath of two reputable physicians that such person is of unsound mind and unfit to be at large.
 2. Before granting the order the judge must examine the person himself or, if that is impracticable, cause him to be examined by an impartial person duly sworn for that purpose.
 3. After the order is granted the person alleged to be of unsound mind, his or her husband or wife or relative to the third degree, may appeal to the district court and demand therein an investigation before a jury, which must be substantially in all respects conducted as under an inquisition of lunacy.

CHAPTER 10.

MASTER AND SERVANT.

- § 140, Civil C. am'd. **§ 2831. Apprenticeship authorized.** Male minors and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves by a writing called an indenture as fully as if they were of age to serve as clerks, apprentices or servants in a particular calling until majority or for any shorter time.
- § 141, Civil C. **§ 2832. By whom consent given.** Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or indorsed thereon, signed:
1. By the father and mother of the apprentice.
 2. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary

guardian or executor has been appointed by him with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the county, then by the mother.

3. If the father is dead and such guardian or executor has been appointed by him, then by such guardian or executor.

4. If the mother is dead or lacks capacity to consent, then by the father.

5. If there is no parent of capacity to consent and no such executors, then by the guardian; or,

6. If there is no such parent, executor or guardian, then by the county commissioners of the county, or by any two justices of the peace of the county, or by the county judge.

§ 2833. Liability on breach of contract. A parent, executor or guardian, consenting to an indenture is not liable for a breach thereof by the apprentice, unless the indenture or consent expresses an intention to bind him therefor. § 142, Civil C.

§ 2834. Poor may be bound. Any child who is chargeable, or whose parents are chargeable, to a county may be bound to service until attaining majority by the county commissioners as provided in this chapter; but such binding by such county commissioners must be with the consent in writing of the county judge of the county. § 143, Civil C. am'd.

§ 2835. Indian child. No child of an Indian woman can be bound under this chapter, except in the presence and with the consent of a justice of the peace; and his certificate of consent must be filed with the county judge of the county where the indenture is executed. § 144, Civil C.

§ 2836. Indenture must state age. In every indenture of apprenticeship the age of the apprentice must be stated, and such statement is presumptive evidence thereof; and before an officer executes an indenture or consents thereto, he must inform himself of the age of the apprentice. § 145, Civil C.

§ 2837. Consideration. If there is any pecuniary consideration for an indenture of apprenticeship on either part it must be stated therein. § 146, Civil C.

§ 2838. Education required. The indenture shall also contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write and to be taught the general rules of arithmetic or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture; and that he will give him a new Bible at the expiration of his term of service. § 147, Civil C.

§ 2839. Filing counterpart. Every officer executing an indenture of apprenticeship must file a counterpart thereof with the county judge of the county in which he is an officer. § 148, Civil C.

§ 2840. Immigrant minor. An immigrant minor may bind himself to service until he attains majority, or for a shorter term, in such manner as may be prescribed by the law of the country in which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term. § 149, Civil C.

§ 2841. Acknowledgment. Every indenture under section 2840 must be duly acknowledged by the minor on a private examination before a county judge or a justice of the peace, and a certificate § 150, Civil C.

of the acknowledgment, showing that the same was made freely, must be indorsed upon the contract.

§ 151, Civil C. **§ 2842. Assignment allowed.** The master under an indenture specified in section 2840 may assign it by writing indorsed thereon and with the approval also indorsed of a magistrate mentioned in section 2841.

§ 152, Civil C. **§ 2843. When indenture void.** No indenture or contract for the service of an apprentice is binding upon him unless made as hereinbefore prescribed.

§ 153, Civil C.
am'd. **§ 2844. Duty of county commissioners.** The county commissioners must see that every apprentice or other servant in their respective counties is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law.

§ 154, Civil C. **§ 2845. Penalty for willful absence.** If an apprentice for whose instruction the master receives no pecuniary consideration willfully absents himself from service without leave, he may be compelled to serve double the time of such absence unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term.

§ 155, Civil C. **§ 2846. Free vocation.** No person may accept from an apprentice or servant an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant any consideration for exercising his vocation in any place after his term of service has expired.

§ 156, Civil C. **§ 2847. Penalty for restraint.** Any consideration exacted contrary to the last section may be recovered back with interest, and every person accepting such agreement or exacting such consideration is liable to the apprentice or servant in a penalty of one hundred dollars.

§ 157, Civil C. **§ 2848. Deceased master.** The executors or administrators of the master of any apprentice bound by officers of the poor may assign the indenture with the written consent of the apprentice, acknowledged before a justice of the peace.

§ 158, Civil C. **§ 2849. Consent to assignment.** If an apprentice refuses consent to an assignment under the last section, the county or district court may authorize such assignment without his consent, upon application after fourteen days' notice to the apprentice or to his parents or guardian, if he has any in the county.

CHAPTER 11.

CORPORATIONS.

ARTICLE 1.—THE CREATION OF CORPORATIONS.

§ 373, Civil C. **§ 2850. Corporation defined.** A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

§ 2851. **Reserved power of legislative assembly.** Every grant of corporate power is subject to alteration, suspension or repeal in the discretion of the legislative assembly. § 375, Civil C.

§ 2852. **Collateral inquiry prohibited.** The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers shall not be inquired into collaterally in any private action to which such de facto corporation may be a party. § 376, Civil C.

§ 2853. **Name required.** Every corporation must have a corporate name which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended. § 377, Civil C.

§ 2854. **Corporations classified.** Corporations are either: § 378, Civil C.

1. Public; or,
2. Private.

§ 2855. **Public. How regulated.** Public corporations are formed or organized for the government of a portion of the state. Such corporations are regulated by the political code or by local statute. § 379, Civil C.

§ 2856. **Private. Purposes.** All corporations not public are private. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. § 380, Civil C. am'd.

§ 2857. **Articles.** The instrument by which a private corporation is formed is called "Articles of Incorporation." § 381, Civil C. am'd.

§ 2858. **How formed.** Private corporations may be formed by the voluntary association of three or more persons, except as otherwise expressly provided, upon complying with the provisions of this chapter. § 384, Civil C. 1, c. 35, 1887. 1, c. 39, 1893. am'd.

§ 2859. **Religious and charitable limited.** No corporation or association for religious or charitable purposes shall acquire or hold real estate in this state of a greater value than fifty thousand dollars. § 385, Civil C. am'd.

§ 2860. **Penalty for violating last section.** All real estate acquired or held by such corporations contrary to the provisions of the last section shall be forfeited and escheat to the state; but existing vested rights in real estate shall not be impaired by the provisions of this section. § 385, Civil C. am'd.

§ 2861. **Contents of articles.** The articles of incorporation must set forth: § 386, Civil C. am'd.

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees and the names and residences of those who are to serve until their successors are elected and qualified.

6. If there is a capital stock, its amount and the number of shares into which it is divided.

§ 2862. **Articles. Roads, etc.** The articles of any corporation formed for the purpose of constructing wagon roads, telegraph or telephone lines must also state: § 387, Civil C. am'd.

1. The place from and to which the road or line is intended to be run and branches contemplated.

2. The counties through which it is intended to be run.

3. The estimated length and cost of the road or line.

§ 2863. **Articles. Railways, etc.** The articles of incorporation of railway corporations shall be in compliance with section 2944; of insurance corporations, in compliance with section 3088; of fraternal associations or corporations, in compliance with section 3184; of banking corporations, in compliance with section 3227.

§ 388, Civil C.
am'd.

§ 2864. **Subscribed by three persons.** The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this state, and acknowledged by each before some officer authorized to take acknowledgments of conveyances of real property.

1, c. 139, 1890.
1, c. 105, 1891.
am'd.

§ 2865. **Fee for articles.** Every corporation for profit except building and loan associations, county mutual insurance companies, corporations for the manufacture of dairy products, agricultural fair corporations, and corporations whose capital stock does not exceed five thousand dollars formed for the purchase and maintenance of male animals for the improvement of stock, shall at or before the filing of the articles of incorporation pay into the state treasury, the sum of fifty dollars for the first fifty thousand dollars, or fraction thereof, of the capital stock of such corporation, and the further sum of five dollars for every additional ten thousand dollars, or fraction thereof, of its capital stock.

§ 2, c. 139, 1890.
am'd.

§ 2866. **Fee in case of increase of stock.** No increase of the capital stock of any corporation heretofore or hereafter formed, other than those excepted in the last section, shall be valid until such corporation shall have paid into the state treasury the sum of five dollars for every ten thousand dollars, or fraction thereof, of such increase in the capital stock of such corporation.

§ 3, c. 139, 1890.
am'd.

§ 2867. **Receipt of treasurer filed.** It shall be the duty of every corporation hereafter organized, or which shall hereafter increase its capital stock, other than those excepted in section 2865, to file with the secretary of state at the time of filing the articles of incorporation, or instrument evidencing such increase, a duplicate receipt of the state treasurer for the payments herein required to be made, which receipt, in duplicate, it is made the duty of such treasurer to furnish.

§ 389, Civil C.
§ 1, c. 35, 1885.

§ 2868. **Secretary's certificate.** Upon the filing of the articles of incorporation with the secretary of state he shall issue to the corporation over the great seal of the state a certificate that the articles containing the required statement of facts have been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate by the name and for the purposes stated in said articles.

§ 390, Civil C.
§ 2, c. 35, 1885.

§ 2869. **Record by secretary.** Upon the filing of any articles of incorporation as in the last section is prescribed the secretary of state shall cause the same to be recorded in a book to be kept in his office for that purpose to be called the "book of corporations," with the date of filing.

§ 391, Civil C.

§ 2870. **Copy. Evidence.** A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all courts and other places as prima facie evidence of the facts therein stated and of the existence of such corporation.

§ 392, Civil C.

§ 2871. **Stockholders and members defined.** The owners of shares in a corporation which has a capital stock are called stock-

holders. If a corporation has no capital stock the incorporators and their successors are called members.

§ 2872. **Stock of minors, etc., how represented.** The shares of stock of an estate of a minor or insane person may at all elections and meetings of a corporation be represented by his guardian, and of a deceased person, by his executor or administrator. § 393, Civil C.

ARTICLE 2. — CORPORATE STOCK.

§ 2873. **Subscription enforced.** A subscription to the stock of a corporation about to be formed is to be held for the benefit of the corporation when it is formed and may be enforced by it. § 395, Civil C.

§ 2874. **Books opened for subscriptions.** After the secretary of state issues the certificate of incorporation as provided in section 2868, the directors named in the articles of incorporation must proceed in the manner specified or provided in their by-laws, or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; and to levy and collect assessments thereon in the manner provided by article six of this chapter. § 396, Civil C. am'd.

§ 2875. **May forfeit stock or recover subscription.** When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for nonpayment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both. § 397, Civil C.

§ 2876. **Stock negotiable. How indorsed.** All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for the issuance of certificates prior to the full payment under such restrictions and for such purposes as their by-laws provide. Upon all certificates of stock which are fully paid up, issued by a corporation, shall be indorsed the words "fully paid up." When certificates of stock are issued before they are fully paid up the secretary shall, before the same are issued, indorse thereon the amount which has been paid. No corporation shall issue any certificates of stock under an agreement or with the understanding that the full par value shall not be paid. Any officer of a corporation who issues certificates of stock in violation of the provisions of this chapter, or who has knowledge thereof, and does not at the time dissent therefrom in writing shall be liable to the creditors of the corporation and to purchasers in good faith of such stock for all damages they may sustain thereby. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, such shares of stock are personal property and may be transferred by indorsement by the signature of the proprietor or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares and the date of the transfer. § 398, Civil C. am'd.

§ 2877. **For what stock and bonds can be issued.** No corporation shall issue stock or bonds except for money, labor done or property, estimated at its true money value, actually received by it, and all the officers of a corporation who consent to the issuance of stock or bonds for labor or property in excess of its actual cash value, § 138, Const.

or who have knowledge thereof and do not at the time dissent therefrom in writing shall be jointly and severally liable to the creditors of such corporation for the difference between the actual cash value of such labor or property at the time such stock or bonds were issued and the par value of the stock or bonds issued therefor.

§ 2878. Note not payment for stock. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock; but the capital stock shall be paid in, either in cash, or in the manner provided in this article.

§ 399, Civil C.
am'd.

§ 2879. Excess void. A corporation whose capital is limited by its articles of incorporation, either in amount or in number of shares cannot issue valid certificates in excess of the limit thus prescribed.

§ 400, Civil C.
§ 1, c. 10, 1883.

§ 2880. Corporation may own its stock. Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock from its surplus profits, or as provided in the article on assessments of stock, or by the unanimous consent in writing of all its stockholders, in such manner and for such price or consideration as the said stockholders may unanimously decide upon.

§ 401, Civil C.

§ 2881. Dividend belongs to whom. A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

ARTICLE 3.—CORPORATE POWERS.

§ 402, Civil C.
am'd.

§ 2882. Powers of corporations. Every corporation as such has power:

1. To have succession by its corporate name for the period limited, not exceeding twenty years, if a corporation for profit; and if not a corporation for profit, perpetually, subject to the power of the legislative assembly as hereinbefore declared.
2. To sue and be sued in any court.
3. To make and use a common seal and alter the same at pleasure.
4. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding in any case any amount limited by law.
5. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.
6. To make by-laws not inconsistent with the law of the land for the management of its property, the regulation of its affairs and for the transfer of its stock.
7. To admit stockholders or members and to sell their stock or shares for the payment of assessments or installments.
8. To enter into any obligations or contract essential to the transacting of its ordinary affairs, or for the purposes of the corporation.
9. The powers of banking corporations are prescribed in sections 3229 and 3230.

In addition to the above enumerated powers and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given.

§ 403, Civil C.
am'd.

§ 2883. By-laws. Who adopt. Every corporation formed under this chapter must within one month after filing articles of

incorporation adopt a code of by-laws for its government not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there is no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called notice thereof shall be published two times, once in each week, for two successive weeks in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published at the seat of government. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there is no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

§ 2884. Scope of by-laws. A corporation may by its by-laws, § 404, Civil C. when no other provision is specially made, provide:

1. The time, place and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election for directors and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding in any case one hundred dollars for any one offense.

§ 2885. Record. Certificates. Repeal of by-laws. All § 405, Civil C. by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation to be known as the "book of by-laws," and no by-laws shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws and to adopt new by-laws may by a similar vote at any such meeting be delegated to the board of directors. The power when delegated may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws and immediately after them, and shall not take effect until so copied. If any by-law is repealed, the fact of the repeal with the date of the meeting at which the repeal was enacted shall be stated in the said book and until so stated the repeal shall not take effect.

§ 2886. Election of directors. The directors of a corporation § 406, Civil C. must be elected annually by the stockholders or members unless otherwise expressly provided, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of election of directors must be given for the same time and in the same manner as provided in section 2883. am'd.

§ 406, Civil C.

§ 2887. Same. At the first meeting at which by-laws are adopted, or at such subsequent meeting as may then be designated, directors must be elected to hold their offices for one year and until their successors are elected and qualified.

§ 406, Civil C.
am'd.

§ 2888. Manner of voting. All elections of directors must be by ballot and every stockholder shall have the right to vote, in person or by proxy, the number of shares standing in his name as provided in section 2895, for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The persons receiving the highest number of votes shall be declared elected.

§ 407, Civil C.
am'd.

§ 2889. Number and power of directors. Unless otherwise expressly provided, the corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or, when there is no capital stock, then from the members of such corporation. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

§ 408, Civil C.
am'd.

§ 2890. Organization and election of officers. Immediately after their election the directors must organize and elect a president of the corporation, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

§ 409, Civil C.
1, c. 81, 1889.
am'd.

§ 2891. Dividends only from profits. Limitation of indebtedness. Exception. The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond the subscribed capital stock, or reduce or increase the capital stock, except as specially provided by law; provided, however, that the above limitation as to the creation of debts, shall not apply to the policy risks of insurance companies on which no loss has occurred, or the notes, bonds or debentures of any loan or trust company, organized under the provisions of this chapter when the payment of such notes, bonds or debentures shall be secured by the actual transfer of real estate by trust deed or mortgage for the payment of such notes, bonds or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds or debentures; provided, further, that such limitation shall not apply to any loan or trust company's guarantee of payment after transfer of any note, bond or debenture when the same is secured by trust deed or mortgage as above stated.

§ 409, Civil C.
am'd.

§ 2892. Penalty for violation of last section. For a violation of the provisions of the last section the directors under whose

administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen; are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any action against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

§ 2893. False certificate or notice. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice or entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. § 409, Civil C. am'd.

§ 2894. Removal of directors. No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place and object of the meeting and by whose order it was called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 2883, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting. § 410, Civil C.

§ 2895. Quorum. Proxy. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented either in person or by proxy in writing. Every person acting therein in person, or by proxy, or representative must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. § 411, Civil C. am'd.

§ 2896. Election failing. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election § 412, Civil C.

has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 2894.

§ 412, Civil C.

§ 2897. Action. Election confirmed or new one ordered.

Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

§ 412, Civil C.
1, c. 36, 1887.
am'd.

§ 2898. Where meetings held. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business; provided, that the meetings of the board of directors of a railway corporation may be held at the business office of such corporation without the state as well as its principal place of business within the state.

§ 1, c. 36, 1895.

§ 2899. Same. The meetings of the board of directors of any private corporation created and existing or which may hereafter be created under and by virtue of the laws of the state of North Dakota, having one or more directors, resident in this state or having duly appointed an agent resident in this state upon whom service may be made, may be held at any place mentioned and provided in its by-laws either within or without the state.

§ 412, Civil C.

§ 2900. Meetings, how called. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary on the order of the president, or if there is none, on the order of two directors.

§ 412, Civil C.

§ 2901. When called by justice. Whenever from any cause there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 413, Civil C.
1, c. 9, 1879.
am'd.

§ 2902. Liability of stockholders. Trust funds. Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any or all of the stockholders of a corporation whose shares have not been fully paid up, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corpo-

ration to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability.

§ 2903. When uncalled meeting valid. When all the stockholders or members of a corporation are present at any meeting, however called or notified and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed; but this section shall not be construed to authorize the stock or bonded indebtedness of corporations to be increased, except at a meeting held after sixty days' notice. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 414, Civil C.
am'd.

§ 2904. Nonresident transfers. When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary and directors of the corporation before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence is not furnished, may require from the attorney, agent or claimant a bond of indemnity with two sureties satisfactory to the officers of the corporation or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares in case of his or her death before the transfer, and if such affidavit, or other evidence, or bond is not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

§ 415, Civil C.
am'd.

§ 2905. Increasing or diminishing stock. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors as follows:

§ 416, Civil C.
am'd.

1. Notice of the time and place of the meeting, stating its object and the amount to which it is proposed to increase or diminish its capital stock must be personally served on each stockholder resident in the state sixty days prior to the time of such meeting at his place of residence, if known; and the notice must be given to stockholders whose place of residence is unknown or who are not residents in the

state by the publication of such notice in a newspaper published in the county where the principal office of the corporation is situated, not less than once a week for sixty days prior to such meeting.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution before it can be effected.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the capital stock shall be so increased or diminished.

§ 2906. Bonds, how issued. At a meeting of the stockholders of the corporation called for that purpose by the directors a corporation may issue bonds, as follows:

1. Notice of the time and place of the meeting, stating its object and the amount of bonds to be issued, must be served in the manner provided in the last section.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the issuance of bonds.

3. The certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount of bonds to be issued, the amount of stock represented at the meeting and the vote by which the object was accomplished, which certificate shall be filed in the office of the secretary of state, there to be recorded in the book of corporations.

A violation of any of the provisions of this section shall render every director, officer and stockholder of the corporation, who had knowledge of such violation and did not dissent therefrom and cause his dissent to be entered at large upon the journal of the corporation, jointly and severally liable for all debts so created.

ARTICLE 4. — CORPORATE RECORDS.

§ 417. Civil C.

§ 2907. Record of business transaction. Stock book. Publicity. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized and the notice thereof given. The record must embrace every act done, or ordered to be done; who were present and who were absent; and, if requested by any director, member or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition and a record thereof made. On a similar request the protest of any director, member or stockholder to any action or proposed action must be entered in full;

all such records shall be open to the inspection of any director, member, stockholder or creditor of the corporation.

In addition to the records above required to be kept corporations for profit must keep a book to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom, and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

ARTICLE 5. — AMENDING ARTICLES OF INCORPORATION.

§ 2908. Amending articles of incorporation. Any private corporation created or existing, or which may hereafter be created under the laws of the state of North Dakota, may amend or change its articles of incorporation at a meeting called for that purpose by the directors, as follows: § 1, c. 40, 1893.
am'd.

1. Notice of the time and place of the meeting stating its object, must be served in the manner prescribed in section 2905.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the amendment or change in the articles of incorporation.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the articles to be amended or changed, the amount of stock or the number of members represented at the meeting and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the articles shall be so amended.

5. The written assent of the holders of three-fourths of the capital stock or members shall be as effectual to authorize the change or amendment of the articles of incorporation as if a meeting of the stockholders, as prescribed by this section, was called and held and upon such written assent the directors may proceed to make the certificate to the secretary of state as herein provided.

§ 2909. Renewal of corporate existence. Any private corporation now existing in this state or which may hereafter be created under the laws of this state may at any time prior to the expiration of the period of its corporate existence as limited by its articles of incorporation or by this chapter renew the term of its corporate existence for another term of years, not exceeding the period limited by law, by amending its articles of incorporation in the manner and upon the notice prescribed in section 2908.

ARTICLE 6. — CHANGING CORPORATE NAME.

§ 2910. Changing corporate name. Every private corporation created and existing, or which may hereafter be created under § 1, c. 41, 1893.
am'd.

the laws of the state of North Dakota, may change its name at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object, must be served in the manner prescribed in section 2905.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of name.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the name adopted as the new name of such corporation, the amount of stock or the number of the members represented at the meeting and the vote by which the change of name was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the name of such corporation shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the change of name as if a meeting was called and held, as prescribed by this section, and upon such written assent the president and secretary may proceed to make the certificate to the secretary of state as herein provided.

6. Every proceeding, act, liability or thing done, undertaken, or incurred by or on behalf of the corporation, under its former name, shall be and continue of the same validity and obligation under such new name as if the name had remained unchanged.

ARTICLE 7. — CHANGING CORPORATE HEADQUARTERS.

§ 1, c. 49, 1890.
am'd.

§ 2911. Changing corporate headquarters. Every private corporation created and existing, or which may hereafter be created under the laws of the state of North Dakota, may change the place where its principal business is to be transacted at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object must be served in the manner specified in section 2905.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of the place where the principal business of the corporation is to be transacted.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the place to which the place where the principal business of the corporation is to be transacted has been changed, the amount of stock or the number of the members represented at the meeting, and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the place where the principal business of the corporation is to be transacted shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize such change as if a meeting was called and held; and upon such written assent the directors may proceed to make the certificate herein provided for.

ARTICLE 8. — DISSOLUTION OF CORPORATIONS.

§ 2912. Involuntary. Voluntary, how. A corporation is § 418, CIVIL C. dissolved:

1. By the expiration of the time limited by its articles of incorporation.

2. Its involuntary dissolution is provided for in chapter 26 of the code of civil procedure.

3. If voluntary, its dissolution may be effected in the following manner:

(a) A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

(b) The application must be in writing and must set forth, that at a meeting of the stockholders or members called for that purpose the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members, and that all claims and demands against the corporation have been satisfied and discharged.

(c) The application must be signed by a majority of the board of directors, trustees or other officers having the management of the affairs of the corporation and must be verified in the same manner as a complaint in a civil action.

(d) If the court is satisfied that the application is in conformity with this article, it must order the application to be filed and that the clerk give not less than thirty nor more than fifty days' notice of the application by publication in some newspaper published in the county and if there are none such, then by advertisement posted up in five of the principal places in the county.

(e) At any time before the expiration of the time of publication any person may file his objection to the application.

(f) After the time of publication has expired the court may upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court must declare the corporation dissolved.

(g) The application, notices and proof of publication, objections, if any, and declaration of dissolution constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 2913. Lapse by nonuser. If a corporation does not organize and commence the transaction of business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. § 419, CIVIL C.

§ 2914. Directors trustees on dissolution. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation and to collect and pay debts and divide among the stockholders the property which remained after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution. § 420, CIVIL C.

§ 421, Civil C. **§ 2915. Liability of trustees.** The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation to the extent of its property in their hands.

§ 422, Civil C. **§ 2916. How revived.** A corporation once dissolved can be revived only by the same power by which it could be created.

ARTICLE 9. — ASSESSMENTS OF STOCK.

§ 423, Civil C. **§ 2917. When levied.** The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may for the purpose of paying expenses, conducting business or paying debts levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein.

§ 424, Civil C. **§ 2918. Limitation of.** No assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 425, Civil C. **§ 2919. When new assessment can be levied.** No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second or third subdivision of section 2918.

§ 426, Civil C. **§ 2920. Requisites of assessment.** Every order levying an assessment must specify the amount thereof, when, to whom and where payable, fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order of levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 427, Civil C. **§ 2921. Form of notice.** Upon the making of the order the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of principal place of business.)

Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment shall remain unpaid on the

(day fixed) will be delinquent and advertised for sale at public auction and unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment together with costs of advertising and expenses of sale.

(Signature of secretary with location of office.)

§ 2922. Service of notice. The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper is published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there is no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there is one, and if there is none, then in a newspaper published in an adjoining county. § 428, Civil C.

§ 2923. Notice of delinquency. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published a notice substantially in the following form: § 429, Civil C.

(Name in full. Location of principal place of business.)

NOTICE. There is delinquent upon the following described stock on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount). And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary with location of office.)

§ 2924. Contents of notice. The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except when certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon together with the fact that the certificate for such shares has not been issued must be stated. § 430, Civil C.

§ 2925. Publication thereof. The notice when published in a daily paper must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale. § 431, Civil C.

- § 432, Civil C. **§ 2926. Jurisdiction to sell stock.** By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.
- § 433, Civil C. **§ 2927. Manner of sale.** On the day, at the place and at the time appointed in the notice of sale the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.
- § 434, Civil C. **§ 2928. Highest bidder defined.** The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.
- § 435, Civil C. **§ 2929. When corporation may bid.** If at the sale of stock no bidder offers the amount of the assessment and costs and charges due the same may be bid in and purchased by the corporation through the secretary, president or any director thereof at the amount of the assessment, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation and an entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividend be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.
- § 436, Civil C. **§ 2930. Title to stock in corporation.** All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.
- § 437, Civil C. **§ 2931. Time extended by publication.** The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.
- § 438, Civil C. **§ 2932. Irregularities do not invalidate.** No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection.

all previous proceedings except the levying of the assessment, are void and publication must be begun anew.

§ 2933. Redemption. Limitation. No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale is made. § 439, Civil C. am'd.

§ 2934. Proof of publication and sale. The publication of notice required by this article may be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation and copies of the same certified by the secretary thereof are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof. § 440, Civil C.

§ 2935. Stock may be declared delinquent or action brought. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof. § 441, Civil C.

ARTICLE 10.—JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES.

§ 2936. Franchise saleable. No exemption. For the satisfaction of any judgment against a corporation authorized to receive tolls its franchise and all the rights and privileges thereof may be levied upon and sold under execution in the same manner and with the same effect as any other property, but without any exemption. § 442, Civil C.

§ 2937. Certificate of purchase. Rights of purchaser. The purchaser at the sale must receive a certificate of purchase of the franchise and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof and must thereafter conduct the business of such corporation with all its powers and privileges and subject to all its liabilities, until the redemption of the same as hereinafter provided. § 443, Civil C.

§ 2938. Further rights. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause occurring during the time he holds the same and may use the name of the corporation for the purpose of § 444, Civil C.

any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 445. Civil C. **§ 2939. Other powers of corporation remain.** The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties and is liable to the same penalties and forfeitures as before such sale.

§ 446. Civil C. **§ 2940. Corporation may redeem.** The corporation may at any time within one year after such sale redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor with twelve per cent interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation as if no such sale had been made.

§ 447. Civil C. **§ 2941. Where sold.** The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid is situated.

ARTICLE 11. — EXAMINATION OF CORPORATIONS, ETC.

§ 448. Civil C. **§ 2942. Examination by legislative assembly.** The legislative assembly or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and for that purpose any committee appointed by the said assembly or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition and compel the production of all keys, books, papers and documents by summary process to be issued on application to any district court or any judge thereof under such rules and regulations as the court may prescribe.

§ 449. Civil C.
am'd. **§ 2943. Power reserved by legislative assembly.** The legislative assembly may at any time amend or repeal this chapter, or any article or section thereof and dissolve all corporations thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against such corporation, its stockholders or officers, for any liability which has been previously incurred.

CHAPTER 12.

RAILROAD CORPORATIONS.

ARTICLE 1. — INCORPORATION AND REGULATION.

§ 2944. **Who may form. Articles.** Any number of persons, § 1, c. 46, 1879.
not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers and for the purpose of maintaining and operating any railroad already constructed for the like purpose. am'd.

The articles of incorporation shall state:

1. The name of the corporation.
2. The place from and to which such railroad is to be constructed, or maintained and operated, as the case may be.
3. The estimated length of such railroad and the name of each county in this state through or into which it is made or intended to be made.

4. The amount of the capital stock of the corporation, the number of shares of which it shall consist, and if such stock shall consist of common and preferred stock, the number and amount of each class.

5. The names and residences of the directors of the corporation, who shall manage its affairs for the first year and until others are chosen in their places, and who shall not be less than five nor more than thirteen in number; and each such person shall subscribe thereto his name, place of residence and the number of shares of stock he agrees to take in such corporation. There shall be annexed to such articles an affidavit of at least three of the directors therein named, that the signatures thereto are genuine and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned; and thereupon said articles and affidavits shall be filed in the office of the secretary of state.

§ 2945. **Number and term of directors.** There shall be a board of not less than five nor more than thirteen directors of every such corporation, who shall be elected at such time, in such manner and for such term as shall be prescribed by its by-laws and shall hold their offices until their respective successors shall be chosen. § 3, c. 46, 1879. am'd.

§ 2946. **Stock not transferable until calls paid.** No stock of a railroad corporation is transferable, until all previous calls thereon shall have been fully paid in. § 6, c. 46, 1879.

§ 2947. **Powers.** Every corporation formed under this article and every railroad corporation authorized to construct, operate or maintain a railroad within this state shall have in addition to the powers mentioned in section 2882 the following powers: §§ 9, 10, c. 46, 1879. § 1, c. 92, 1883. am'd.

1. To cause such examination and surveys for its proposed railroad, as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

2. To take and hold such voluntary grants of real estate and other property as may be made to it to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. To acquire under the provisions of the chapter on eminent domain or by purchase all such real estate and other property as may be necessary for the construction, maintenance and operation of its railroads and the stations, depot grounds and other accommodations reasonably necessary to accomplish the objects of its incorporation; to hold and use the same, to lease, or otherwise dispose of any part or parcel thereof, or sell the same when not required for railroad uses and no longer necessary to its use.

4. To lay out its road not exceeding one hundred feet in width and to construct the same; and for the purpose of cuttings and embankments and of obtaining gravel and other material to take as much land as may be necessary for the proper construction, operation and security of the road and for the protection of such road from snow and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for land taken for the use of the corporation.

5. Subject to the provisions of section 2956, to construct its railroad across, along or upon any stream of water, water course, street, highway, toll or wagon road, plank road, turnpike, wharf, levee, river front, steamboat or other public landing or canal which its route shall intersect or touch; to carry any highway, street, toll or wagon road, plank road or turnpike which it shall touch, intersect or cross over or under its track, as may be most expedient for the public good; to change the course or direction of any highway, street, turnpike, toll or wagon road or plank road when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad and take land necessary therefor; provided, such highway or road is not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods.

6. To cross, intersect, join and unite its railroad with any railroad heretofore or hereafter constructed at any point on its route and upon the grounds of such railroad corporation, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the objects of its connections. And every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections the same shall be ascertained and determined in the manner provided by law for the ascertainment and determination of damages for the taking of real property. But no corporation which shall have obtained the right of way and constructed its road at the point of intersection before the commencement of an action under the provisions of the chapter on eminent domain shall be required to alter the grade or change the location of its road or be required to bear any part of the expense of making and maintaining such crossing.

7. To have and use equal room, ground, rights, privileges and conveniences for tracks, switches, sidings and turn-outs upon any levee, river bank or front, steamboat or other public landing and upon any street, block, alley, square or public ground within any incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding; and to accomplish this may adjust with other corporations the ground to be occupied by each

with such tracks, switches, sidings and turn-outs; and if such corporations cannot agree upon such adjustment and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid the same shall be ascertained and determined and the common, mutual and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The court, or a judge thereof, may employ a competent engineer and define, locate and plat the ground and assign to each corporation the part for the tracks and other conveniences for each and may require the removal or purchase of tracks previously laid so as justly to settle the rights of such corporation upon such ground, the damages to be paid being assessed in accordance with the chapter on eminent domain.

8. To take and convey persons or property over its road by the power or force of steam, or of animals, or by any mechanical power and to receive compensation therefor; and to do all the business incident to railroad corporations.

9. To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business, subject to the statutes in relation thereto.

10. To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor.

11. To borrow from time to time such sums of money at such rates of interest and upon such terms as the corporation or board of directors shall agree upon and authorize as necessary or expedient and to execute trust deeds or mortgages, or both as occasion may require on any railroads or parts thereof constructed or in process of construction, for amounts borrowed or owing by the corporation, and therein to make provision granting, transferring or mortgaging its railroad track, right of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, implements, appendages and appurtenances used in connection with such railroads, in any manner whatever then belonging to the corporation or which may thereafter belong to it as security for any bonds or evidences of debt therein mentioned, in such manner as the corporation or directors shall think proper, and such instruments shall fully convey the same or so much thereof as shall be therein described. In case of sale by virtue of any such trust deed or upon foreclosure of any such mortgage the persons acquiring title under such sale and their associates, successors and assigns, or such corporation as they shall organize according to section 2944, with all the powers conferred upon corporations by this chapter, shall thereafter have, exercise and enjoy all such described grants which were purchased at such sale, including all rights, privileges, grants, franchises, immunities and advantages mentioned in such instruments which were possessed by such corporations making the same or contracting such debts, so far as the same relate or appertain to that portion or line of road granted or mortgaged and purchased at such sale and no further as fully and absolutely in all respects as such corporation, its shareholders, officers and agents might have done if such sale had not taken place. And whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage and shall also include the persons who owned at the time of the sale a majority in amount of the capital stock of

such mortgagor corporation, such purchasers and such corporation as they shall organize as aforesaid, shall also have, possess and enjoy any exemption, privilege or immunity previously granted by any law to such former corporation relating to any of the property so acquired to the same extent as if such latter corporation had been named in such law as the grantee thereof.

§ 1. c. 99, 1893.
am'd.

§ 2948. Right of way through state lands. Conditions.

Every railroad company duly organized under the laws of any state or territory, or by the United States authorized to build and operate a railroad within this state, which shall have filed with the secretary of state a copy of its articles of incorporation properly certified shall have the right to take, hold and use for the purposes of a railroad a strip of land one hundred feet wide, fifty feet on each side of the center line of such railroad, through each and every tract of public land owned or held by the state across which its road has been or shall be located or constructed; provided, that when it shall be necessary to protect such railroad from snow, or to use extra width in its construction such company shall have the right to take, hold and use a strip of land not exceeding two hundred feet in width, one hundred feet on each side of such center line, through such public lands; provided, further, that at all its regular stations established upon such land such company shall have the right to take a strip of land one thousand six hundred feet long and three hundred feet wide for station purposes.

§ 2. c. 99, 1893.

§ 2949. School lands at appraised value. Whenever any school or state lands are taken for railway purposes as provided in the preceding section, the railway company so taking such lands shall pay to the state treasurer the appraised value thereof, but in no case any sum less than ten dollars per acre for all such lands so taken.

§ 3. c. 99, 1893.
am'd.

§ 2950. How right of way obtained. Any railway company desiring to secure the benefits of section 2948 shall within ninety days after the definite location of its road across any section of such lands file in the office of the board of university and school lands a plat of such section of land, showing the location of such road through the same and all stations located thereon; and thereafter all such lands over which such roads shall pass shall be disposed of subject to this grant; and every certificate or patent for such lands thereafter sold shall contain an express reservation to the use of such company of all lands which it shall have appropriated in accordance with the provisions of this article; provided, that if such road shall not be completed across any such section within five years after the location of the same thereon the rights herein granted shall be forfeited as to any such section of land.

§ 4. c. 99, 1893.

§ 2951. When right of way reverts to state. If any railway company appropriating any public lands by virtue of section 2948 shall at any time abandon the use thereof for railway purposes for a period of one year the same shall revert to the state.

§ 11. c. 46, 1879.
am'd.

§ 2952. Extensions and branches. Any railroad corporation may, under the provisions of this article, extend its road from any point named in its articles of incorporation or may build branch roads, either from any point on its line of road, or from any point on the line of any other road connecting or to be connected with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured by a lease or agreement for a term of not less than ten years from its date. Before making such extension or building any such branch road such cor-

poration shall by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section 2944 and file a copy of such record certified by the president and secretary in the office of the secretary of state and cause the same to be recorded as provided in such section. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its articles of incorporation. But this section shall not be construed to authorize railroad corporations to consolidate with each other.

§ 2953. Directors may alter route. The board of directors of every railroad corporation may by a vote of two-thirds of the whole number at any time alter the route, or any portion of the route of its road, or any extension or branch thereof, or part of its road, or any extension or branch as constructed, if it shall appear to it that the line can be improved thereby; but no railroads shall be so diverted from any county, town, city or village which in its corporate capacity shall have extended aid to such road, either while in the hands of the then present owner or any former person or corporation; and no such alteration shall be made in any city or village after the road shall have been constructed therein, unless the same shall have been sanctioned by a vote of two-thirds of the council of such city or the trustees of such village. Before making any such alterations the board of directors shall designate the route thereof by resolution, to be entered in its records, filed and recorded in the office of the secretary of state, as provided in the preceding section; thereupon it shall have the same rights and privileges to build such road as altered as if it was the original line. § 12, c. 46, 1879.
am'd.

§ 2954. Consolidation, leasing and purchase of non-competing lines. Any railroad corporation organized and existing under the laws of the territory of Dakota or state of North Dakota, or existing by consolidation of different railway companies under the laws of such territory or state and of any other territory or state, may consolidate its stock, franchises and property with any other railroad corporation, whether within or without the state, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line with or without branches upon such terms as may be agreed upon and become one corporation by any name selected, which within this state shall possess all the powers, franchises and immunities, including the right of further consolidation with other corporations under this section, and be subject to all liabilities and restrictions of this chapter. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock in person or by proxy at a meeting called for that purpose of which notice, stating the object of the meeting, shall be given in the manner prescribed in section 2905, and a copy thereof with a copy of the record of such approval and accompanied by lists of their stockholders and the number of shares held by each, duly certified by their respective presidents and secretaries with the respective seals of such corporations affixed shall be filed for record in the office of the secretary of state before any such consolidation shall have any validity or effect. Any such railroad corporation may lease or purchase and take a conveyance or assignment of the railroad, franchises, immunities and all other prop- § 13, c. 46, 1879.
§ 1, c. 91, 1883.
am'd.

erty and appurtenances of any other railroad corporation, or any portion thereof within or without this state, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line, or when the road so purchased will constitute branches or feeders of any road maintained and operated by such purchasing corporation. Such purchase or lease must be authorized by the stockholders of the respective corporations at a meeting called as herein provided for the consolidation of railroads and by the same vote. But no railroad corporation shall consolidate with, or lease or purchase, or in any way become owner of, or control any other railroad corporation or any stock, franchises, rights or property thereof which owns and controls a parallel and competing line. In no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies consolidated at the par value thereof, nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation.

§ 15, c. 46, 1879.
am'd.

§ 2955. Highways, etc., to be restored to former state.

Every corporation constructing, owning or using a railroad shall restore every stream of water, water course, street, highway, plank road, toll or wagon road, turnpike or canal across, along or upon which such railroad may be constructed to its former state or to such condition as that its usefulness shall not be materially impaired, and thereafter maintain the same in such condition against any effects in any manner produced by such railroad.

§ 16, c. 46, 1879.

§ 2956. Clear passage over highways. When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any highway, street, turnpike or plank road, toll or wagon road it shall be sufficient to construct the same so as to give a clear passage way of twenty feet or two passage ways of fourteen feet each.

§ 17, c. 46, 1879.

§ 2957. Fixtures defined. What subject to mortgage.

All rolling stock of any railroad corporation organized under the provisions of this article used and employed in connection with its railroad and all fuel necessary to the operation of the same are declared and shall be held to be fixtures; and all such property and all additional rights of way, depot grounds and other real property acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein shall be subject to the lien thereof to the same extent as the property therein described which the corporation owned at the time of its execution.

§ 18, c. 46, 1879.

§ 2958. Conveyances, etc., how executed and recorded.

Every conveyance or lease, deed of trust, mortgage or satisfaction thereof made by any railroad corporation of any franchises, real estate, fixtures or other real property in pursuance of law shall be executed and acknowledged in the manner in which conveyances of real estate by corporations are required to be to entitle the same to be recorded and shall be recorded in the office of the secretary of state, who shall indorse thereon his certificate thereof, specifying the day and hour of its reception and the volume and page where recorded, which shall be evidence of such facts. Every such record of any such instrument shall from the time of reception have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds may have by law as to property in his county and shall be notice of the rights and interests of the grantee, lessee or mortgagee by such instrument to the

same extent as if it was recorded in each and all of the several counties in which any property therein described may be situated.

§ 2959. **Conditional sale valid.** In all cases where railroad equipment and rolling stock may have been or shall be sold to any person, firm or corporation to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer or deliverer of the same until the price agreed upon or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer or deliverer until such payments are fully made shall be valid for all intents and purposes as to subsequent purchasers in good faith and creditors; provided, that the term during which the installments or rents are to be paid shall not exceed ten years and such contract shall be in writing and acknowledged.

§ 1, c. 93, 1883.
am'd.

§ 2960. **Where recorded. Cars, etc., how marked.** Such contract shall be recorded in the office of the secretary of state and on each locomotive or car that may have been or may be so sold or leased the name of the vendor, or lessor, or assignee of the vendor or lessor shall be marked in a conspicuous place followed by the word, "owner" or "lessor," as the case may be.

§ 2, c. 93, 1883.
am'd.

§ 2961. **Sinking fund.** The board of directors of any railroad corporation may annually or oftener, as may be deemed expedient, set apart and appropriate a sum of money not exceeding fifty per cent of its net earnings as resources for any one year, after paying the current expense of its road and the interest on its outstanding indebtedness, in order to sink, redeem, pay off, cancel or discharge the indebtedness of such corporation; and the said sums so set apart shall be annually applied to the payment and discharge of such debts of such corporation as shall be due, and to the purchase and redemption of the outstanding evidences of indebtedness of such corporation, as the board of directors thereof shall deem most for the interest of such corporation and for no other purpose.

§ 19, c. 46, 1879.

§ 2962. **Defense of usury prohibited.** No railroad corporation shall be allowed to make the defense of usury against the holder of any bond or other obligation for the payment of money issued by such corporation.

§ 20, c. 46, 1879.

§ 2963. **May classify directors.** Any railroad corporation may by a vote of a majority in amount of the stockholders present or represented at any annual meeting classify its directors into three classes, each of which shall be composed, as nearly as may be, of one-third of the directors; the term of office of the first class to expire in one year, of the second in two years and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire; all other vacancies shall be filled in accordance with the by-laws.

§ 21, c. 46, 1879.

§ 2964. **Annual report must be made. Contents.** Every railroad corporation shall make an annual report to the stockholders of its operations during the year ending on the thirtieth day of June, which report shall be verified by the affidavit of the secretary, treasurer, superintendent and directors of the corporation and shall state:

§ 22, c. 46, 1879.

1. The length of the road in operation, the length of single track, the length of double track, the weight of the rail per yard.

2. The capital stock actually subscribed and the amount paid thereon.

3. The whole cost of the road, showing the amount expended for the right of way, bridging, grading, iron and buildings respectively and for all other purposes incidental to the construction of such road.

4. The amount and nature of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness and the amount due the corporation.

5. The amount received for the transportation of passengers, property and mails, for interest and from other sources respectively.

6. The amount of freight, specifying the quantity in tons or other usual mode of measurement.

7. The amount paid for the repairs of the road, buildings, engines and cars respectively, for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for wages of employees; the aggregate amount paid for salaries of officers and for any other purpose incidental to the business of transportation so as to give a complete statement of the entire annual expense of the corporation.

8. The amount of loss to the corporation paid for loss and damage to freight and injury to person and property.

9. The number and amount of dividends and when made and in what manner such dividends have been paid.

10. The amount appropriated to sinking fund and the manner in which the same has been applied and the total amount then held by such sinking fund.

11. The number of persons killed or injured, the causes thereof and whether passengers or persons employed by the corporation.

12. Whether any such accidents have arisen from carelessness or negligence of any person in the employ of the corporation and whether such person is retained in the service of such corporation. The secretary of each railroad corporation shall mail to every stockholder thereof, whose post office address is known, a copy of its annual report and shall file a certified copy thereof with the commissioners of railroads on or before the fifteenth day of September in each year.

§ 140, Const.

§ 2965. Must maintain office in the state. Every railroad corporation organized and doing business in this state under the laws or authority thereof shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock 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, and the transfers of said stock; the amount of its assets and liabilities and the names and places of residence of its officers. Any corporation violating any of the provisions of this section or of section 2964 shall, upon conviction thereof in any district court, be subject to a penalty of not less than one hundred and not more than five thousand dollars and its corporate rights shall be subject to forfeiture.

§ 27, c. 46, 1879.
am'd.

§ 2966. How foreign corporation may extend its road into this state. Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point may extend its railroad into the state from

any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road such corporation shall by resolution of its directors to be entered in the records of its proceedings, designate the route of such proposed extension or branch in the manner provided in section 2944 and file a copy of such record certified by the president and secretary in the office of the secretary of state. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of association duly filed in accordance with the provisions of this article.

§ 2967. Train to be run each week day. Every railway company owning or operating a railway line in this state is required to run a train of cars over its lines and branches of any line one way during every week day of the year unless prevented by storm, accident or other cause over which the railroad company has no control. § 1, c. 103, 1893. am'd.

§ 2968. Penalty. For each and every violation of the provisions of the last section the railway company shall be subject to a fine of five hundred dollars. § 2, c. 103, 1893. am'd.

§ 2969. Trains to be run at regular times. Every such railroad corporation shall start and run its cars for the transportation of persons or property at regular times to be fixed by public notice and shall furnish sufficient accomodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer or be offered for transportation at the place of starting or at the junction of other railroads and at siding and stopping places established for receiving and discharging way passengers and freight and shall take, transport and discharge passengers and property at, from and to such places on the due payment of tolls, freight or fare therefor. § 474, Civil C.

§ 2970. Penalty. In case of the refusal by such corporation or its agents to take or transport any passenger or property as provided in the preceding section, or in case of the neglect or refusal of such corporation or its agents to discharge or deliver passengers or property at the regularly appointed place under the laws which regulate common carriers such corporation shall pay to the party aggrieved all damages which shall be sustained thereby with costs of action. § 475, Civil C.

§ 2971. When not liable for personal injuries. In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car in violation of the printed regulations of the corporation posted up at the time in a conspicuous place inside of its passenger cars then in the train such corporation shall not be liable for the injury; provided, it had furnished room inside its passenger cars sufficient for the accomodation of its passengers. § 476, Civil C.

§ 2972. Same responsibility on all trains carrying passengers. When fare is taken by any railroad corporation for transporting passengers on any mixed train of passenger and freight cars or on any baggage, wood, gravel or freight car the same care must be taken and the same responsibility and duties are assumed by the corporation as for passengers on passenger cars. § 477, Civil C.

§ 2973. Temporary ways while changing highway. Every railroad corporation while employed in raising or lowering any § 479, Civil C.

turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed shall provide and keep in good order suitable temporary ways to enable travelers to avoid or pass such obstructions.

§ 480, Civil C.

§ 2974. Bridges must be in good repair. Every railroad corporation shall maintain and keep in good repair all bridges with their abutments which such corporation shall construct for the purpose of enabling its road to pass over or under any turnpike road, canal, water course or other way.

§ 481, Civil C.
am'd.

§ 2975. Signs at crossings. Every railroad corporation operating a line of road within this state must erect suitable signs of caution at each crossing of its road with a public highway, which signs shall be painted with black Roman or block letters on white background, said letters to be at least eight inches in length and proportionately broad; said signs shall be placed at the top of posts at least fifteen feet high.

§ 483, Civil C.

§ 2976. Bell and whistle. A bell of at least thirty pounds in weight or a steam whistle shall be placed on each locomotive engine and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street and be kept ringing or whistling until it shall have crossed said road or street under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this state, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

§ 2977. Train must stop before crossing other railroads or drawbridge. Every train of cars and every locomotive about to cross the track of another railroad shall come to a full stop before arriving at or crossing the track of such other and within four hundred feet thereof; and the train or locomotive arriving near such crossing first shall cross and move on first; and every such train or locomotive shall also come to a full stop before crossing or running upon any drawbridge over a stream which is regularly navigated by vessels during the season when such stream is so used for navigation, and the use of such draw is necessary for the passage of boats, vessels and other crafts, navigating the waters of such stream, at a distance from such bridge of not more than six hundred feet; provided, that no such stop need be made before crossing such drawbridge or railroad crossing of railroads operated by the same company, if at the time an employee of the company shall be standing on such bridge or crossing with a proper light by night, or flag by day, and signal such train to proceed.

§ 679, C. Civil P.
am'd.

§ 2978. Killing of stock prima facie evidence of negligence. The killing or damaging of any horses, cattle or other stock by the cars or locomotives along a railroad shall be prima facie evidence of carelessness and negligence on the part of the corporation.

§ 484, Civil C.

§ 2979. Crossing when land on both sides owned by one person. When any person owns land on both sides of any railroad the corporation owning such railroad shall, when required so to do make and keep in good repair one causeway or other safe and adequate means of crossing the same.

§ 1, c. 57, 1883.

§ 2980. When required to fence. Whenever the owner of any tract of land abutting against any line of railroad within this state shall desire to inclose any such tract of land for pasturage or other

purposes and shall construct a good and sufficient fence about said tract of land on all sides except along the side abutting against such railroad it shall be the duty of such railroad company to construct a good and sufficient fence not less than four and one-half feet high on the side of such tract or lot so far as the same extends along the line of such railroad and to maintain the same in good repair and condition, until released therefrom by the owner of said tract or until the owner of said tract shall have ceased to maintain, in good repair and condition for the term of one year, his portion of the fence around such inclosure.

§ 2981. Notice from owner. Whenever the owner of any tract of land shall have completed his portion of the fence about such proposed inclosure he shall give written notice of its completion to the railroad company upon whose line said tract is situated by personal service upon the agent of said company at the station nearest to the proposed inclosure describing in said notice the situation of said tract and the number of acres to be inclosed, as near as may be, and the length of the fence required along the line of such railroad to complete the proposed inclosure; and it shall be the duty of the railroad company to construct and complete its portion of such fence within sixty days after the service of such notice. § 2, c. 57, 1883.

§ 2982. Liability of company. If any railroad company shall neglect or refuse to comply with any of the requirements of the last two sections it shall be lawful for the owner of such tract to construct or repair the fence along the line of such railroads and the railroad company shall be liable to the owner thereof to an amount not exceeding one dollar and twenty-five cents per rod to be recovered in a civil action; and such railroad company shall be liable for all damages accruing by reason of such neglect or refusal. § 3, c. 57, 1883 am'd.

LIABILITY OF RAILROADS FOR CAUSING FIRES.

§ 2983. Liability for damages from fire. All railroad companies or corporations operating or running cars or steam engines over roads in this state shall be liable to any party aggrieved for all damages resulting from fire negligently escaping or being negligently scattered or thrown from said cars or engines; provided, that such railroad company or corporation shall not be liable for said damages when the same results from the default or negligence of the party injured. § 1, c. 102, 1893.

§ 2984. Escape of fire prima facie evidence of negligence. Upon the trial of any action against a railroad company doing business in this state for damages resulting from fire escaping or being scattered or being thrown from its cars or engines or from cars or engines under its control the party injured shall not be required to show defect in such cars or engines or negligence on the part of the employees of such company; but the fact of such fire so escaping or being so scattered or thrown shall be construed as prima facie evidence of such defect or negligence. § 2, c. 102, 1893.

MAINTENANCE OF STATION HOUSES.

§ 2985. When station house to be maintained. Every railroad corporation in the state shall build a station house and keep a station agent twelve months each year at all its sidings where there § 1, c. 97, 1895.

is grain and merchandise of any description shipped, the freight on which amounts to forty thousand dollars or more in any one year.

§ 2, c. 97, 1895. **§ 2986. Penalty.** Any railway company or corporation failing to comply with the provisions of the last section shall be punished by a fine of not less than two thousand dollars and it shall be the duty of the commissioners of railroads to enforce the provisions of such section in the name of the state of North Dakota.

REGULATING NUMBER OF TRAIN MEN.

§ 1, c. 94, 1895. **§ 2987. Number of train men.** It shall be the duty of every corporation operating a railway within the limits of this state which has not complete air equipments in good order on all rolling stock in use on said road to furnish at least two brakemen to each freight train consisting of forty-five cars and it shall be the duty of said company to furnish an extra brakeman on said freight train for every ten cars or fraction thereof in excess of said forty-five cars; provided, that this section shall not apply to any train which has therein, equipped with air brakes, a sufficient number of cars to render hand brakes unnecessary in the ordinary stoppage of trains.

§ 1, c. 94, 1895. **§ 2988. Penalty.** For each and every violation of the last section the railroad corporation so offending shall be subject to a penalty of fifty dollars to be recovered in a civil action and paid to the state of North Dakota and it is made the duty of the attorney general upon complaint of any citizen to commence and prosecute this action in his own name as attorney general on behalf of the state.

ARTICLE 2.—LICENSING TICKET AGENTS.

§ 1, c. 104, 1893. **§ 2989. Agents to obtain state license. Fee.** It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell within the state tickets or other evidence thereof entitling the holder thereof to travel upon his or their railroad or steamboat with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat and shall for the information of travelers be kept posted in a conspicuous place in the office of such agent. After issue of such certificate as aforesaid such agent or a superintendent or general officer of such owners shall within ten days thereafter exhibit the same to the secretary of state of the state of North Dakota and at the same time shall pay to said secretary of state a license fee of five dollars, whereupon said secretary of state shall issue to such agent so presenting said certificate a license under the seal of the state of North Dakota, authorizing such agent to engage in the business of selling transportation tickets of said common carrier and said license so issued to such agent by said secretary of state shall also be kept posted in a conspicuous place in the office of such agent for the information of travelers and of the public. Whenever any agent so authorized as aforesaid shall by death, resignation or otherwise cease to be such agent his successor, appointed by said railroad or steamboat company, or the owner or owners thereof, shall be authorized to sell tickets for said company and act as the agent thereof under the provisions of this article.

§ 2990. No transfer of ticket without license. It shall not be lawful for any person not in the possession of such certificate and license so posted as aforesaid to sell, barter or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the owner's title or right to travel on said railroad or steamboat, whether such railroad or steamboat is situated, operated or owned within or without the limits of this state. § 2, c. 104, 1893.

§ 2991. Penalty for violation. Whoever shall violate the provisions of the second section of this article shall be deemed guilty of a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted. § 3, c. 104, 1893.

§ 2992. Agent to exhibit license. It shall be the duty of any agent residing or acting within this state who shall be authorized to sell therein tickets or other evidences of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or any officer of the law who may request him so to do such certificate of his authority thus to sell and such license. § 4, c. 104, 1893.

§ 2993. Redemption. Violation. Penalty. It shall be the duty of the owners of every railroad or steamboat situated or operated in whole or in part within this state to provide for the redemption under reasonable precautions of the whole or of any coupon or coupons of any ticket theretofore sold by any agent authorized as aforesaid, which the purchaser for any reason, other than the expiration of the time limited in said ticket for the use thereof, has not used, in case of a ticket not used and, in case of a coupon or a ticket partially used, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used; provided, that such ticket or coupon or coupons shall be presented for such redemption to any agent authorized as aforesaid before the time therein limited for the use thereof shall have expired and the deposit of such ticket or part of ticket in the post office, addressed to any such agent, with postage thereon duly paid, before the expiration of the time limited on any such ticket or part of ticket shall be deemed such presentation; and the sale by any person of such ticket or the unused portion of any such ticket or coupon or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this article and any person guilty of such violation shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted; provided, however, that when any ticket selling agent so licensed as aforesaid or any common carrier subject to the provisions of this article shall sell, barter or transfer to any person any mileage book or commutation ticket or excursion ticket at any reduced rate authorized by law, and when such mileage book, commutation ticket or excursion ticket shall by the terms thereof be limited in respect to the time in which the same shall be used, then and in that case such mileage book, commutation ticket or excursion ticket shall not be redeemed by said common carrier, subject to the provisions of this article. § 5, c. 104, 1893.

§ 6, c. 104, 1893. **§ 2994. Refusal to redeem. Penalty.** Any railroad company or steamboat company which shall by any of its authorized ticket selling agents within this state unreasonably refuse to redeem any coupon of a ticket or any ticket as required by section 2993 shall pay to the state of North Dakota a fine not exceeding five hundred dollars for each offense.

§ 7, c. 104, 1893. **§ 2995. Penalty for fraudulent use or transfer.** Whenever any person in the employ of any railroad or steamboat company doing business in this state shall fraudulently neglect to cancel or return to the proper officer of the company or agent of such railroad or steamboat company any coupon, or any ticket, or pass with intent to permit the same to be used in fraud of any railroad company or steamboat company; or if any person shall steal or embezzle any such coupon or other ticket or pass, or shall fraudulently stamp or print or sign any such ticket, coupon or pass, or shall fraudulently sell or put in circulation any such ticket, coupon or pass said person shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a period not exceeding five years.

§ 8, c. 104, 1893. **§ 2996. Discrimination in price. Penalty.** It is unlawful for any ticket selling agent so authorized and licensed as aforesaid or for any common carrier subject to the provisions of this article to charge, demand, collect, receive from, or to sell, barter, transfer or assign to any person or persons, firm or company, corporation or association any tickets of any class whatever entitling the purchaser or holder thereof to transportation by the common carrier issuing such ticket or tickets for a greater or less sum or price than is charged, demanded, collected or received by such ticket selling agent or common carrier subject to the provisions of this article for a similar ticket or tickets of the same class. Any person, ticket selling agent or common carrier subject to the provisions of this article who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars for each offense.

ARTICLE 3. — MAPS OF RIGHT OF WAY.

§ 1, c. 130, 1890, am'd. **§ 2997. To file maps of right of way.** All railroad corporations doing business in this state shall file with the county auditor of each county in which such railroad or any part thereof may be located a map showing the correct location of all right of way and side tracks in such county owned or occupied by such railroad corporation and also showing the number of acres in each parcel of land included by such railroad corporation or any of them in such county as right of way.

§ 2, c. 130, 1890, am'd. **§ 2998. Same.** Any railroad corporation, which may hereafter acquire any right of way or other property as set forth in the last section, shall file within six months after the location of its right of way a map as provided for in the last section.

§ 3, c. 130, 1890. **§ 2999. Penalty.** Any railroad corporation which shall violate any of the provisions of the last two sections shall upon conviction thereof be fined in a sum of not less than one hundred dollars nor more than five hundred dollars.

ARTICLE 4. — CROSSINGS.

§ 3000. **To maintain sufficient crossings.** All railway companies operating a line of railway in this state shall build or cause to be built and kept in repair good and sufficient crossings over such line at all points where any public highway in use is now or may hereafter be intersected by the same. § 1, c. 127, 1890.

§ 3001. **How to be constructed.** Such crossing shall be constructed as follows: § 2, c. 127, 1890. am'd.

1. Of a grade of earth on one or both sides of the railroad track as the location may require twenty feet in width, the middle point of which shall be as nearly as practicable at the middle point of the highway and such grade shall be of such slope as shall be necessary for the safety and convenience of the traveling public.

2. Plank shall be firmly spiked on and for the full length of the ties used in the roadbed of such railway where such crossing occurs and shall be laid not more than one inch apart except where the rail prevents; the plank next inside of the rail shall not be more than two and one-half inches from the inside surface of such rail and the plank used in the crossing shall not be less than three inches in thickness and so laid that the upper surface of the plank shall be on a level with the upper surface of the rail; such plank shall extend along the railway the entire width of the highway grade and in no case less than twenty feet.

§ 3002. **Penalty for violation.** Any railroad company which shall violate any of the provisions of the last two sections shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars and shall be liable for all damages caused thereby. § 5, c. 127, 1890. am'd.

ARTICLE 5. — BOARD OF RAILROAD COMMISSIONERS.

§ 3003. **How constituted.** The three persons elected commissioners of railroads, pursuant to the provisions of section 82 of the constitution of this state, constitute and shall be known and designated as the "Board of railroad commissioners of the state of North Dakota." They shall have power to elect one of their number president of such board and to appoint a secretary.

§ 3004. **Who disqualified.** No person in the employment of, or owning any stocks or bonds, or otherwise pecuniarily interested in, or an officer of any railroad, freight or transportation company, public warehouse or elevator operated in this state shall be eligible to the office of commissioner of railroads. § 2, c. 110, 1889. am'd.

§ 3005. **Oath and bond.** Such commissioners before entering upon the duties of their office shall take and subscribe the following oath, which shall be filed in the office of the secretary of state, viz:

I do solemnly swear (or affirm) that I will support the constitution of the state of North Dakota and that I will faithfully discharge the duties of commissioners of railroads to the best of my ability; that I am not in the employment of and that I own no stock or bonds of and am not otherwise pecuniarily interested in, nor an officer of any railroad, freight or transportation company, public warehouse or elevator operated in this state.

And each of such commissioners shall give at the same time a bond to the state in the sum of ten thousand dollars with sureties to be

approved by the state treasurer, conditioned for the faithful discharge of his duties, which bond shall be filed in the office of the secretary of state.

§ 3006. Salary. Office, where kept. The salary of each commissioner shall be two thousand dollars per annum; the salary of the secretary shall be one thousand dollars per annum. Such commissioners shall keep their office at the seat of government and shall be provided with a suitable room, necessary office furniture, stationery, books and maps, the expense thereof to be paid out of the state treasury, but the total sum therefor shall not exceed five hundred dollars per year. The accounts for all payments authorized by this section except salary shall be audited only when approved by the governor.

§ 4, c. 110, 1889.
am'd.

§ 3007. Free passage. Such commissioners and the persons in their official employment shall, when in the performance of their official duties, have the right to pass free of charge on all railroads, steamers, vessels and boats and on all vehicles employed in or by any railroad or other transportation company engaged in the transportation of freight and passengers within this state.

§ 3, c. 110, 1889.
am'd.

§ 3008. Powers and duties. Such board shall have general supervision of all railroads in this state and all freight and passenger transportation and traffic thereon or connected therewith and shall inquire into any neglect or violation of the laws of the state by any railroad company, its officers, agents or employees, doing business therein, and shall from time to time carefully examine and inspect the condition of each railroad in the state and all railway stations and passenger and freight depots and buildings and the conduct and management of such railroads with reference to the safety and convenience of the public.

§ 17, c. 110, 1889.
§ 9, c. 122, 1890.
am'd.

§ 3009. Attorney general attorney for board. Duties of state's attorneys. The attorney general of the state of North Dakota shall be ex officio attorney for the board of railroad commissioners and shall give it such counsel and advice as it may from time to time require; and he shall institute and prosecute any actions which such board may deem it proper and expedient to prosecute; and he shall render such board all counsel, advice and assistance necessary to carry out the provisions of any law of this state according to the true intent and meaning thereof. It shall also be the duty of the state's attorney in every county on request of such board to institute and prosecute and to appear and defend for such board in any and all actions and proceedings which he shall be requested by such board to institute and prosecute and to appear in all actions and proceedings to which the board is a party. Such board shall have power to employ additional counsel to assist such attorney general or state's attorney, when in its judgment the exigencies of the case may so require. The fee of such additional counsel shall be determined by the governor and paid by the state.

§ 23, c. 110, 1889.
am'd.

§ 3010. Annual report of commissioners. Such board of railroad commissioners shall on or before the first Monday of November 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 it seem appropriate. Such 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 character of its preferment.
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 such road by the United States or by this state.
8. The number of acres of such 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 at the close of business June thirtieth of such year and the details of its transportation business transacted during the year ending June thirtieth.
11. The average amount of tonnage that can be carried over each road within the state with one engine of given power.

§ 3011. Special reports biennially. It shall also at such times as the governor shall direct examine any particular subject connected with the condition and management of such railroads and report to him in writing its opinion thereon with its reasons therefor. Such board shall also investigate and consider what, if any, amendment or revision of the railroad laws of this state the best interests of the state demand and it shall make a special biennial report on such subject to the governor. All such reports made to the governor shall be by him transmitted to the legislative assembly at the earliest practicable time. § 18b, c. 122, 1890.

§ 3012. Majority vote decides. All questions arising in the action of such commissioners shall be decided and determined by a majority vote. § 25, c. 110, 1889.
am'd.

ARTICLE 6.—TO REGULATE COMMON CARRIERS AND DEFINE THE DUTIES OF THE COMMISSIONERS OF RAILROADS.

§ 3013. To whom article applies. The provisions of this article shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management or arrangement for carriage or shipment from one place or station to another, both being within the state of North Dakota; provided, that nothing in this article shall apply to street § 1a, c. 122, 1890.

railways or to the carriage, storage or handling by any common carrier of property free or at reduced rates for the United States or for the state of North Dakota, or for any municipal government or corporation within the state, or for any charitable purpose, or to or from fairs and expositions for exhibition thereat, or stock for breeding purposes or to the issuance of mileage, excursion or commutation passenger tickets at rates made equal to all, or to transportation to stock shippers with cars; and nothing in the provisions of this article shall be construed to prevent common carriers subject to the provisions of this article from issuing passes for the free transportation of passengers, or to ministers of religion, sisters of charity, or to missionaries, or to students of any college or university or other institutions of learning of this state or to children attending any of the educational or charitable institutions of the state subject to the provisions of this article.

§ 1 b, c. 122, 1890.

§ 3014. Railroad and transportation defined. The term "railroad" as used in this article shall include all bridges or ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad, whether owned, or operated under a contract, agreement or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

§ 2 a, c. 122, 1890.

§ 3015. Charges to be equal and reasonable. All charges made by any common carrier subject to the provisions of this article for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property shall be equal and reasonable; and every unequal and unreasonable charge for such service is prohibited and declared to be unlawful; provided, that one car load of freight of any kind or class shall be transported at as low a rate per ton, and per ton per mile, as any greater number of car loads of the same kind and class from and to the same points of origination and destination..

§ 2 b, c. 122, 1890.

§ 3016. No preference to be given. It shall be unlawful for any common carrier subject to the provisions of this article to make or give any unequal or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any unequal or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 3 a, c. 122, 1890.

§ 3017. Ample facilities for transferring. All common carriers subject to the provisions of this article shall, according to their respective powers, provide at the point of connection, crossing or intersection ample facilities for transferring cars and for accommodating and transferring passengers and traffic of all kinds and classes from their lines or tracks to those of any other common carrier whose lines or tracks may connect with, cross or intersect their own and shall afford all equal and reasonable facilities for the interchange of cars and traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property and cars to and from their several lines and those of other common carriers connecting therewith and shall not discriminate in their rates and charges between such connecting lines or for freight coming over such lines; but this article shall not be construed as requiring any common carrier to use for another common carrier its tracks, equipments or terminal facilities without reasonable compensation.

§ 3018. Shall not prevent carriage of freight from being continuous. It shall be unlawful for any common carrier subject to the provisions of this article to enter into any combination, contract or agreement, express or implied, to prevent by change of time or schedule, or by carriage in different cars, or by any other means or devices the carriage of freight from being continuous from the place of shipment to the place of destination, and no break of bulk, stoppage or interruption made by such common carrier shall prevent the carriage of freight from 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 article. § 3 b, c. 122, 1890.

§ 3019. Shall furnish, start and run cars without delay. Every common carrier operating a railway in this state shall without unreasonable delay furnish, start and run cars for the transportation of persons and property, which within a reasonable time theretofore is offered for transportation at any of its stations on its line of road and at the junctions of other railroads and at such stopping places as may be established for receiving and discharging passengers and freights; and shall take, receive, transport and discharge such passengers and property at, from and to such stations, junctions and places on and from all trains advertised to stop at the same for passengers and freights respectively upon the due payment or tender of payment of tolls, freight or fare therefor, if such payment is demanded. Every such common carrier shall permit connection to be made and maintained in a reasonable manner with its side tracks to and from any warehouse, elevator or manufactory without reference to its size or capacity; provided, that this shall not be construed so as to require any common carrier to construct or furnish any side track off from its own line; provided, further, that where stations are twelve miles apart or more the common carrier, when required to do so by the commissioners of railroads, shall construct and maintain a side track for the use of shippers between such stations. § 3 c, c. 122, 1890.
am'd.

§ 3020. Cannot limit its common law liability. Whenever any property is received by any common carrier subject to the provisions of this article to be transported from one place to another within this state it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule hereinafter provided for, its common law liability with reference to such property while in its custody as a common carrier as hereinbefore mentioned: such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property. § 3 d, c. 122, 1890.

§ 3021. Shall not pool. It shall be unlawful for any common carrier subject to the provisions of this article to enter into any contract, agreement, or combination with any other common carrier or carriers for the division or pooling of business of different or competing railroads, or to 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 their business aforesaid each day of its continuance shall be deemed a separate offense. § 4, c. 122, 1890.

§ 3022. Discrimination and rebates prohibited. If any common carrier subject to the provisions of this article shall directly or indirectly by any special rate, rebate, drawback or other device § 5, c. 122, 1890.

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 article than it charges, demands, collects or receives from any other person or persons for doing for him or them a like or contemporaneous service in the transportation of passengers or property such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

§ 6, c. 122, 1890.
§ 1, c. 95, 1891.
am'd.

§ 3023. Long and short haul. It shall be unlawful for any common carrier subject to the provisions of this article to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this article to charge and receive as great compensation for a shorter as for a longer distance; provided, however, that upon application to the commissioners of railroads such common carrier may in special cases after investigation by the commissioners of railroads be authorized to charge less for a longer than for shorter distances for the transportation of passengers or property and the commissioners of railroads may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

§ 7 a, c. 122, 1890.

§ 3024. Long and short haul. It shall be unlawful for any common carrier subject to the provisions of this article to charge or receive any greater compensation per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line in the same general direction, or from the same original point of departure, or to the same point of arrival; but this shall not be construed as authorizing any common carrier subject to the provisions of this article to charge as high a rate per ton per mile for a longer as for a shorter distance.

§ 7, c. 110, 1889.
am'd.

§ 3025. Distribution of cars. When any railroad company doing business in this state shall be unable from 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 freight in car load lots, such cars as are furnished shall be divided daily equally among the applicants in the order of their application until each shall have received one car, when the remainder shall be divided ratably among the several shippers in the proportion that the car load lots of freight offered by each bear to the entire number of car load lots of freight offered at such station or side track on that day; provided, that every application made in good faith on an earlier day shall be filled before supplying any to any applicant of a succeeding day.

§ 7 c, c. 122, 1890.

§ 3026. But one terminal charge for switching or transferring. There shall in no case be more than one terminal charge for switching or transferring any car, whether the same is loaded or empty, within the limits of any one city or town. If it is necessary for any car to pass over the tracks of more than one company within such city or town limits in order to reach its final destination or to be returned therefrom to its owner or owners, then the company first switching or transferring such car shall be entitled to receive the entire charge to be made therefor and shall be liable to the company

or companies doing the subsequent switching or transferring thereof for its or their reasonable and equitable share of the compensation received and if the companies so jointly interested therein cannot agree upon the share thereof which each is entitled to receive, the same shall be determined by the commissioners of railroads, whose decision thereon shall be final and conclusive upon all parties interested and the said commissioners are authorized to establish such rules and regulations in that behalf as to them may seem just and reasonable and not in conflict with this article.

§ 3027. Shall keep schedules for inspection. Every common carrier subject to the provisions of this article shall print and keep for public inspection schedules showing the classification, rates, fares and charges for the transportation of passengers and property of all kinds and classes, which such common carrier has established and which are in force at the time upon its railroad as defined by section 3014. This schedule printed as aforesaid by such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried and shall contain the classification of freight in force upon each of the lines of such railroad, a distance tariff and a table of interstation distances and shall also state separately the terminal charges and any rules or regulations which in any way 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 and copies for the use of the public shall be kept in every depot or station upon any such railroad in such places and in such form that they can be conveniently inspected.

§ 8 a, c. 122, 1890.
am'd.

§ 3028. Notice of changes in schedule. No change of classification shall be made and no change shall be made in the rates, fares and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this article without the order or by the authority of the commissioners of railroads, except after ten days' public notice, which notice shall plainly state the changes proposed to be made in the schedules then in force and the time when the changed schedules 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.

§ 8 b, c. 122, 1890.
am'd.

§ 3029. No charge greater than schedule. When any common carrier shall have established and published its classifications, rates, fares and charges in compliance with the provisions of section 3027, 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 service in connection therewith than is specified in such published schedule of classifications, rates, fares and charges as may at the time be in force.

§ 8 c, c. 122, 1890.

§ 3030. Schedules to be filed. Every common carrier subject to the provisions of this article shall file with the commissioners of railroads copies of its schedules of classifications, rates, fares and charges which have been established and published in compliance with the requirements of section 3027 and shall promptly notify said commissioners of all changes proposed to be 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

§ 8 d, c. 122, 1890.

this article to which contracts, agreements or arrangements it may be a party. And in cases where passengers or freight pass over lines or routes, operated by more than one common carrier and the several common carriers operating such lines or routes establish joint schedules of rates or fares or charges or classifications for such lines or routes copies of such joint schedules shall also in like manner be filed with said commissioners. Such joint schedules of rates, fares, charges and classifications for such lines so filed as aforesaid shall also be made public by such common carriers in the same manner as hereinbefore provided for the publication of tariffs upon its own lines.

§ 8 e, c. 122, 1890.
§ 1 e, c. 96, 1891.

§ 3031. Power of board to keep alive tariffs. In case the commissioners shall at any time find that any part of the tariffs of rates, fares, charges or classifications so filed and published as hereinbefore provided are in any respect unequal or unreasonable they shall have the power and are authorized and directed to compel any common carrier to change the same and adopt such rate, fare, charge or classification as said commissioners shall declare to be equal and reasonable; provided, however, that before said commissioners shall finally fix and declare such rate, fare, charge or classification it shall be the duty of the commissioners of railroads to serve a written notice, by delivering a true copy thereof, upon any agent of the railroad company within this state, setting forth in such notice that at a certain time and place they will proceed to fix and determine such rate, fare, charge or classification; and they shall at such time and place and as soon as practicable afford to any person, firm, corporation or common carrier who may desire it an opportunity to make an explanation or showing or to furnish explanation to said commissioners on the subject of determining and fixing such rate, fare, charge or classification: provided, further, that the said board of railroad commissioners shall not make or declare any order for any purpose without first giving notice to all parties interested as provided in this section.

§ 8 f, c. 122, 1890.
§ 1 f, c. 96, 1891.

§ 3032. Final order fixing rates. Publication of same. When rates in force. After the hearing provided for by the last section the commissioners of railroads shall make their order finally fixing and declaring such rate, fare, charge or classification and shall immediately serve or cause to be served upon every person, firm, corporation or common carrier affected thereby a copy of such order; in case such common carrier shall neglect or refuse for ten days after the service of such order to substitute such tariff of rates, fares and charges or classifications, or to adopt the same as fixed and declared by the commissioners, it shall be the duty of said commissioners immediately to publish such tariff of rates, fares, charges or classifications as they have ordered and declared to be equal and reasonable in one or more newspapers published in the county or counties through or into which the road or line may run, upon which the charges so fixed and declared by the commissioners are to take effect and to post a copy thereof in every railroad depot in the state. The newspapers in which such publication shall be made, subject to the above condition that they shall be published in the county or counties through or into which such road or line or roads may run, and the duration of time which such notice shall be published, shall be in the discretion of the commissioners; but the tariff of rates, fares, charges or classifications fixed and declared by the commissioners shall be in full force and effect from and after the expiration of ten days from the service upon such common carrier of the order provided in this section with-

out regard to the publication authorized by this section; and after the expiration of ten days from the service of such order upon such common carrier it shall be unlawful for such common carrier to charge a higher or lower rate, fare, charge or classification than that fixed by said commissioners; such order shall be prima facie evidence of the equality and reasonableness of the rate, fare, charge or classification fixed and declared thereby.

§ 3033. Mandamus, when. Injunction. If any common carrier subject to the provisions of this article shall neglect or refuse to publish or file its schedule of classifications, rates, fares or charges, or any part thereof, as provided in this article, or if any common carrier shall refuse or neglect to comply with such order made and served by such commissioners, such common carrier shall be subject to a writ of mandamus, to be issued by any judge of the supreme court or of any of the district courts of this state upon application of the commissioners to compel compliance with the requirements of this section and with the order of the commissioners, and failure to comply with the writ of mandamus shall be punishable as and for contempt, and the commissioners, as complainants, may also apply to any such judge for a writ of injunction against such common carrier from receiving or transporting property or passengers within this state until such common carrier shall have complied with the requirements of this section and the order of said commissioners, and for any willful violation or failure to comply with such requirements or such order or orders of said commissioners, the court may award such costs, including counsel fees, by way of penalty, on the return of said writs and after due deliberation thereon as may be just.

§ 8 g. c. 122, 1890.
§ 1 g. c. 96, 1891.

§ 3034. Appeals. Power of court to modify orders appealed from. Any common carrier subject to the provisions of this article may appeal to any district court of this state from any order made by said commissioners regulating or fixing its tariffs of rates, fares, charges or classifications, or from any other order made by said commissioners under the provisions of this article, by serving a notice in writing upon the secretary of said commissioners or any one of said commissioners within sixty days after such common carrier shall have received written notice from said commissioners of the making of such order. If the order appealed from does not regulate or fix the common carrier's tariff of rates, fares or charges the district court to which the appeal is taken may in its discretion suspend the operation and effect of the order appealed from pending such appeal. The district courts of this state shall be deemed to be always in session for the purpose of hearing and determining all appeals taken under the provisions of this article. The common carrier taking such appeal may bring the same on for hearing and determination at any time after taking such appeal, upon serving a notice to that effect upon any one of the commissioners or upon their secretary at least sixty days prior to the day set for such hearing. The district court shall upon the hearing of such appeal receive and consider such evidence as may be adduced by either party and shall rescind, modify or alter said order appealed from in such manner as may be equitable and just. Either party may appeal from the decision of the district court to the supreme court of this state by serving a notice of such appeal upon the opposite party. For the purpose of hearing such appeals the supreme court shall always be in session and appeals to it may be heard summarily by either parties' serving upon

§ 8 h. c. 122, 1890.

the other a notice of hearing at least fifteen days before the day fixed for such hearing. When evidence has been taken before the district court such evidence may be signed by the judges of said district court, the party presenting such evidence to said judges for signature giving the other party five days' notice of the time and place of such presentation. The evidence signed as aforesaid shall become part of the record in the case and upon an appeal to the supreme court being taken as hereinbefore mentioned shall be transmitted by the clerk of the district court to the supreme court together with all the records and files in the case. The supreme court may reverse, affirm or modify the decision of the district court as may seem equitable and just.

§ 10 a, c. 122, 1890.
am'd.

§ 3035. Powers and duties of board. The commissioners of railroads shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this article and shall keep themselves 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 commissioners to perform the duties and carry out the objects for which they were created; in order to enable such commissioners efficiently to perform their duties under this article it is made their duty to cause one of their number to visit the various stations on the lines of each railroad as often as practicable and at least once in twelve months to visit each county in the state in which is or shall be located a railroad station and personally inquire into the management of such railroad business, and for this purpose all railroad companies and common carriers and their officers and employees are required to aid and furnish each of the commissioners with reasonable and proper facilities and each or all of the commissioners shall have the right in his or their official capacity to pass free on any railroad train on all railroads in this state and to enter and remain in at all suitable times any and all cars, offices or depots on or upon the railroads of any railroad company in this state in the performance of official duties; and whenever, in the judgment of the commissioners, it shall appear that any common carrier fails in any respect or particular to comply with the laws of this state, or whenever in their judgment any repairs are necessary upon its railroad, or any addition to or change of its stations or station house is necessary, or any change in the mode of operating its road or conducting its business is reasonable or expedient in order to promote the security, convenience and accommodation of the public, such commissioners shall make an order requiring such common carrier to comply with such law or to make such repairs, or addition, or change, specifying the same particularly and shall cause such order to be served upon the carrier to be affected thereby, which service may be made in the manner provided in section 3031; and if such common carrier shall neglect or refuse to comply with such order the commissioners may, in their discretion, cause actions or proceedings to be instituted to enforce the same as provided in this article.

§ 11 a, c. 122, 1890.

§ 3036. Liability for neglect of duty. In case any common carrier subject to the provisions of this article shall do, cause to be done or permit to be done any act or thing in this article prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this article required to be done such common carrier shall be liable to the person or persons, party or parties injured thereby for the full

amount of damages sustained in consequence of any such violations of the provisions of this article together with a reasonable counsel or attorney's fee to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

§ 3037. Suit may be brought in case of damages. Any person or persons, party or parties claiming to be damaged by the action or nonaction of any common carrier subject to the provisions of this article may either make complaint to the commissioners, as hereinbefore provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this article in any district court of the state of competent jurisdiction, but such person or persons shall not have the right to pursue both of said remedies at the same time. § 11b, c. 122, 1890.

§ 3038. Officers compelled to attend as witnesses. In any such action brought for the recovery of damages the court before which the same may be pending may compel any director, officer, receiver, trustee or agent of any 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; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. § 11 c, e. 122, 1890.

§ 3039. Penalty for noncompliance. Any common carrier subject to the provisions of this article or whenever 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 corporation who alone or with any other corporation, company, person or party shall willfully do or cause to be done or shall willfully suffer or permit to be done any act, matter or thing in this article 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 article required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this article to be done not to be done, or shall aid or abet therein, or shall be guilty of any willful infraction of this article, or shall aid or abet therein shall be deemed guilty of a violation of the provisions of this article and shall, upon conviction thereof in any district court of the state within the jurisdiction of which such offense was committed, be subject to a penalty of not less than two thousand five hundred 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 each subsequent offense. § 12, e. 122, 1890.

§ 3040. Fine not bar to individual action. 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 sustaining damage by reason of the violation of any of the provisions of this article, but in addition thereto any person suffering or sustaining any damage by reason of such violation by any railroad company may maintain an action in his name against such company and in case of a recovery the court shall assess treble damages against such offend- § 21, e. 110, 1890.

ing railroad company in favor of the party suffering or sustaining such damage or injury.

§ 13 a, c. 122, 1890.

§ 3041. Petition to commissioners by persons aggrieved.

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 article, in contravention of the provisions thereof may apply to said commissioners by petition which shall briefly state the facts.

§ 13 b, c. 122, 1890.

§ 3042. Duties of board on such application.

Whereupon a statement of the charges thus made shall be forwarded by the 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 within the time specified shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of the law thus complained of. If such 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 the commissioners summarily to investigate the matter complained of in such manner and by such means as they shall deem proper. No complaint shall at any time be dismissed because of absence of direct damages to the complainant. And for the purposes of this article the commissioners shall have power to require the attendance of witnesses and the production of all books, papers, contracts, agreements and documents relating to any matter under investigation and to that end may invoke the aid of any of the courts of this state in requiring the attendance of witnesses and the production of books, papers and documents under the provisions of this article.

§ 13 c, c. 122, 1890.

§ 3043. Proceedings when subpoenas disobeyed.

Any of the district courts of this state within the jurisdiction of which such inquiry is carried on shall in case of contumacy or refusal to obey a subpoena issued by the commissioners to any common carrier subject to the provisions of this article or, when such common carrier is a corporation, to an officer or agent thereof or to any person connected therewith, if proceedings are instituted in the name of such commissioners as plaintiffs, issue an order requiring such common carrier, officer or agent, or person to show cause why such contumacy or refusal should not be punished as and for contempt and if upon the hearing the court finds that the inquiry is within the jurisdiction of the commissioners and that such contumacy or refusal is willful and the same is persisted in such contumacy or refusal shall be punished as though the same had taken place in an action pending in the district court for any judicial district in this state. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

§ 14 a, c. 122, 1890.

§ 3044. Findings of board in writing.

Whenever an investigation shall be made by said commissioners 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 their recommendations as to what reparation, if any, should be made by the common carrier to the party or parties

who may be found to have been injured; and such findings so made shall thereafter in all judicial proceedings be deemed prima facie evidence as to each and every fact found. All reports of investigations made by the commissioners shall be entered of record and a copy thereof shall be furnished to the party who may have complained and to any common carrier that may have been complained of and the record thereof shall be public.

§ 3045. Report to common carrier, if findings against. 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 testimony of witnesses, or other evidence that anything has been done or omitted to be done by any common carrier in violation of the provisions of this article or of any law cognizable by said commissioners, 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 the commissioners forthwith to cause a copy of its 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 and to make reparation for the injury so found to have been done within a brief but 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 or penalty for such particular violation of law. § 14b, c. 122, 1890.

§ 3046. Report forwarded to attorney general if reparation is not made. If such common carrier shall neglect or refuse within the time specified to desist from such violation of law and make reparation for the injury done in compliance with the notice and report of the commissioners as aforesaid it shall be the duty of the commissioners forthwith to certify the fact of such neglect or refusal and forward a copy of their report and such certificate to the attorney general of the state for redress and punishment as hereinafter provided. § 14 c. c. 122, 1890.

§ 3047. Attorney general to bring suit. It shall be the duty of the attorney general to whom said commissioners may forward their report and certificate as provided in the preceding section when it shall appear from such report that any injury or damage has been sustained by any party or parties by reason of such violation of law by such common carrier forthwith to cause suit to be brought in the district court in the judicial district wherein such violation occurred on behalf and in the name of the person or persons injured against such common carrier for the recovery of damages for such injury as may have been sustained by the injured party, and the costs and expenses of such prosecution shall be paid out of the appropriation hereinafter provided for the uses and purposes of this article. § 15 a, c. 122, 1890.

§ 3048. Power of court. 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 shall 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 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 thinks 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 matters therein stated.

§ 15 c, c. 122, 1890.

§ 3049. Further powers. Appeals to supreme court. If it is made to appear to such court on such hearing or on report of any such person or persons that the lawful order or requirements of such commissioners drawn in 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 such 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 process of said courts 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 proper process, mandatory or otherwise, to pay such sum of money not exceeding, for each carrier in default, the sum of five hundred 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 proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct either to the party complaining or into court to abide the ultimate decision of the court; and 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. Each party to such proceedings before said court may appeal to the supreme court of the state under the same regulations now provided by law in respect to security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon unless the court hearing or deciding such case should otherwise direct; and such court may in every such matter order the payment of such costs and counsel fees as shall be deemed reasonable.

§ 15 d, c. 122, 1890.

§ 3050. Appeal if action not commenced in ten days. In case the attorney general shall not within a period of ten days after the making of any order by the commissioners commence judicial proceedings for the enforcement thereof, any railroad company or other common carrier affected by such order may at any time within the period of thirty days after the service upon him or it of such order and before commencement of proceedings appeal therefrom to the district court of any judicial district through or into which his or its route may run by the service of a written notice of such appeal

upon some of such commissioners. And upon the taking of such appeal and the filing of the notice thereof with the proof of service in the office of the clerk of such court there shall be deemed to be pending in such court a civil action of the character and for the purposes mentioned in sections 3037, 3047 and 3049. Upon such appeal and upon the hearing of and application for the enforcement of any such order made by the commissioners or by the attorney general the court shall have jurisdiction to examine the whole matter in controversy, including matters of fact as well as questions of law, and to affirm, modify or rescind such order in whole or in part as justice may require; no appeal as aforesaid shall stay or supersede the order appealed from and pending the final decision of all appeals to the courts the rates fixed shall remain in full force and effect.

§ 3051. Board may prosecute. Whenever facts in any manner ascertained by said commissioners shall in their judgment warrant a prosecution it shall be the duty of said commissioners immediately to cause suit to be instituted and prosecuted against any common carrier, which may violate any of the provisions of this article or of any law of this state. All such prosecutions shall be in the name of the state of North Dakota except as otherwise provided in this article, or in any law of this state and may be instituted in any county in the state through or into which the line of any common carrier so sued may extend and all penalties recovered under the provisions of this article or of any law of this state, in any suit instituted in the name of the state, shall be immediately paid into the state treasury by the sheriff or other officer or person collecting the same; and the same shall be by the state treasurer placed to the credit of the general fund. § 16a, c. 122, 1890.

§ 3052. Courts always open. For the purpose of this article, except its penal provisions, the district courts and the supreme court of the state shall be deemed to be always in open session. § 16b, c. 122, 1890.

§ 3053. Annual reports from all carriers. The board of commissioners are hereby directed to require annual reports from all common carriers subject to the provisions of this article to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commissioners may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for 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 cost and value of the carriers' property, franchises and equipment, the number of employees and the salary paid each class, the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts of each branch of business, and from all sources, the operating and other expenses; the balance of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet; also the total number of acres of land received as grants from the United States, the number of acres of such grants sold and the average price received per acre, the number of acres of grants unsold and the appraised value per acre. Such detailed report shall also contain such information in relation to rates or regulations concerning fares or freights and agreements, arrangements or contracts with express companies, telegraph companies, sleeping and dining car companies, fast § 17a, c. 122, 1890.
am'd.

freight lines and other common carriers, as the commissioners may require with copies of such contracts, agreements or arrangements.

§ 18c, c. 122, 1890.
am'd.

§ 3054. Pending litigation not affected by this article. Nothing in this article contained shall in any way abridge or alter the remedies now existing at law or in equity, but the provisions of this article are in addition to such remedies. No pending litigation shall in any way be affected by this article. Witnesses summoned before the commission shall be paid the same fees and mileage as are paid witnesses in the district court. All expenses of the commission in making an investigation or examination in any other place than the city of Bismarck shall be allowed and paid out of the state treasury on the presentation of itemized vouchers therefor, approved by the chairman of the commission and the state auditor.

§ 5, c. 110, 1889.

§ 3055. Grain to be shipped without discrimination. 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 or siding 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 its side tracks at any station the same as when offered from warehouses or elevators, allowing a reasonable time for loading them and for the purpose of loading the same shall place the cars in convenient places, easy of 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.

§ 6, c. 110, 1889.
am'd.

§ 3056. Track from elevator to railroad. It shall be lawful for the owner 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 own expense, and it shall be the duty of any such railroad company to allow such connection. Such side tracks 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 the obligations of this section upon such railroad company shall cease and be inoperative as against it until such costs and expenses are fully paid.

§ 1, c. 128, 1890.
am'd.

§ 3057. Side tracks adjacent to coal mines. Whenever any person, owning or operating any coal mine within this state, from which not less than fifty cars of coal have been shipped from any one station over any portion of any railroad within the limits of the state shall petition any such railroad company to build a side track or spur at least three hundred feet in length adjacent to such mine it shall then be the duty of such railroad company to build, equip and operate such side track or spur; provided, that such spur is not nearer than two miles from any station already in operation; provided, further, that any person opening a coal mine within two miles of any station may

petition for a side track or spur and by executing an indemnity bond in favor of such railroad company in the sum of two thousand dollars, conditioned on the agreement that such person will ship within one year after the completion of such spur or side track not less than one hundred car loads of coal and when such bond is duly executed with two sureties, approved by the county judge of the county wherein such side track is situated, such railroad company shall within sixty days build, equip and operate such side track or spur as provided for in this section. And the commissioners of railroads shall have power to locate such side track or spur and order it properly provided with platforms and other conveniences for loading coal and other commodities thereat.

§ 3058. Penalty. Any neglect or refusal to comply with any part of the provisions of the last section within fifteen days after being requested in writing by the person operating the coal mine or by the commissioners of railroads shall subject such railroad company to a forfeiture of fifty dollars per day for each and every day such railroad company shall neglect or refuse to comply with the provisions of the last section, to be recovered by the person affected by such neglect or refusal; provided, that no railroad company shall be compelled to put in a side track between the fifteenth day of November and the fifteenth day of May of any year when it cannot be done without grading. § 2. c. 123, 1890.
am d.

§ 3059. Time to remove property from cars. 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 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. § 12. c. 110, 1899.

§ 3060. Stop over rates on cars. Whenever any railroad company doing business in this state as a common carrier shall ship any car or cars of freight over any of its railway lines or branches thereof, which car or cars contains freight to any intermediate point or points, it shall be the duty of such railroad company to stop such car or cars at such point or points and the consignee of such freight shall be permitted to unload the same upon payment to such railroad company of the full freight rates from the shipping point to the terminal point of such car or cars and in addition thereto the sum of five dollars per car for each and every day such car or cars is or are delayed during such stop over; provided, the car or cars contain no perishable goods and are billed to one consignee, and in no case over one stop or stop over shall be made, nor shall said car or cars be opened but once for distributing goods at intermediate stations. § 1. c. 95, 1895.

§ 3061. Penalty. Every railroad company neglecting or refusing to comply with the provisions of the last section shall be liable to damages in the sum of twenty dollars for each and every day such railroad company neglects or refuses to comply with the provisions § 2. c. 95, 1895.

hereof, to be recovered by any person damaged by reason of such neglect or refusal in any court of competent jurisdiction.

§ 1, c. 123, 1890.
§ 1, H. B. No. 2,
Sp. 1892.
am'd.

§ 3062. Railroads to build platforms. Every railroad company doing business in this state shall within sixty days after notice from the commissioners of railroads erect one or more platforms for the transfer of live stock, grain and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company after receiving notice as provided for in this section shall fail, refuse or neglect to erect such platform as required by this and the following section within the required sixty days the commissioners of railroads are authorized and empowered and it is made their duty to notify such railroad company to appear before them at a certain time and place to show cause, if any there is, why such commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The commissioners of railroads shall have power after such hearing to issue an order upon such railroad company commanding it to erect such platforms, if the commissioners shall upon such examination and hearing deem such platform necessary.

§ 2, c. 123, 1890.
2, H. B. No. 2,
Sp. 1892.
am'd.

§ 3063. Dimensions of platform. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the railroad commissioners above the rails of the track with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

§ 5, c. 123, 1890.

§ 3064. When platforms to be enlarged. The commissioners of railroads shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platform is in their judgment clearly insufficient for the accommodation of the public.

§ 6, c. 123, 1890.

§ 3065. Platform scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

§ 3, c. 123, 1890.
am'd.

§ 3066. Penalty. Every railroad company neglecting or refusing to comply with the requirements of the last four sections shall be deemed guilty of a misdemeanor and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid.

§ 1, c. 105, 1893.

§ 3067. Y and other tracks to be provided. In all cases where any line of railroad shall cross or intersect any other line of railroad in this state on the same grade it shall be the duty of the railroad company owning or operating such intersecting railroad lines, to provide at such crossing or intersection suitable and sufficient facilities such as building Y or other tracks and connections for transferring cars or traffic of all kinds and classes from one such line of railroad to another and to maintain the same and to afford equal and reasonable facilities for the interchange of cars and traffic between the respective lines.

§ 3068. Notice served on carrier in case of noncompliance. Upon the failure of any railroad companies to build or maintain Y or other tracks and suitable connections at railroad crossings in accordance with the last section it shall be the duty of the board of railroad commissioners to serve notice in writing upon such com-

panies, requiring them to construct and maintain such Y or other tracks and connections within sixty days from the date of the service of such notice.

§ 3069. **Penalty for noncompliance.** Any railroad company that shall fail to comply with such notice shall be subject to a fine of one hundred dollars for each day during which it fails to comply after the expiration of the time specified in the notice and it shall be the duty of the attorney general or the state's attorney of any county in which such Y or other tracks are to be constructed and maintained upon demand of the board of railroad commissioners to commence and prosecute all actions necessary for the recovery of such fine.

§ 3070. **Maximum coal rates.** All railroad companies doing business as common carriers within the state of North Dakota shall not charge for the transportation of coal within the state a greater rate per ton than the following: For the first five miles or fractional part thereof, thirty cents per ton; for any distance over five miles and not to exceed fifteen miles, forty cents per ton; for any distance over fifteen miles and not to exceed twenty-five miles, fifty cents per ton; for any distance over twenty-five miles and not to exceed thirty-five miles, fifty-nine cents per ton; for any distance over thirty-five miles and not to exceed forty-five miles, sixty-eight cents per ton; for any distance over forty-five miles and not to exceed fifty-five miles, seventy-five cents per ton; for any distance over fifty-five miles and not to exceed sixty-five miles, eighty-one cents per ton; for any distance over sixty-five miles and not to exceed seventy-five miles, eighty-six cents per ton; for any distance over seventy-five miles and not to exceed eighty-five miles, ninety cents per ton; for any distance over eighty-five miles and not to exceed ninety-five miles, ninety-four cents per ton; for any distance over ninety-five miles and not to exceed one hundred and five miles, ninety-eight cents per ton; for any distance over one hundred and five and not to exceed one hundred and fifteen miles, one dollar and two cents per ton; for any distance over one hundred and fifteen miles and not to exceed one hundred and twenty-five miles, one dollar and six cents per ton; for any distance over one hundred and twenty-five miles and not to exceed one hundred and thirty-five miles, one dollar and ten cents per ton; for any distance over one hundred and thirty-five miles and not to exceed one hundred and forty-five miles, one dollar and fourteen cents per ton; for any distance over one hundred and forty-five miles and not to exceed one hundred and fifty-five miles, one dollar and eighteen cents per ton; for any distance over one hundred and fifty-five miles and not to exceed one hundred and sixty-five miles, one dollar and twenty-two cents per ton; for any distance over one hundred and sixty-five miles and not to exceed one hundred and seventy-five miles, one dollar and twenty-six cents per ton; for any distance over one hundred and seventy-five miles and not to exceed one hundred and eighty-five miles, one dollar and thirty cents per ton; for any distance over one hundred and eighty-five miles and not to exceed one hundred and ninety-five miles, one dollar and thirty-four cents per ton; for any distance over one hundred and ninety-five miles and not to exceed two hundred and five miles, one dollar and thirty-eight cents per ton; for any distance over two hundred and five miles and not to exceed two hundred and fifteen miles, one dollar and forty-two cents per ton; for any distance over two hundred and fifteen miles and not to exceed two hundred and twenty-five miles, one dollar and forty-six cents per ton;

§ 1. c. 101, 1893.
§ 1. c. 93, 1896.

for any distance over two hundred and twenty-five miles and not to exceed two hundred and thirty-five miles, one dollar and fifty cents per ton; for any distance over two hundred and thirty-five miles and not to exceed two hundred and forty-five miles, one dollar and fifty-four cents per ton; for any distance over two hundred and forty-five miles and not to exceed two hundred and fifty-five miles, one dollar and fifty-eight cents per ton; for any distance over two hundred and fifty-five miles and not to exceed two hundred and sixty-five miles, one dollar and sixty-four cents per ton; for any distance over two hundred and sixty-five miles and not to exceed two hundred and seventy-five miles, one dollar and sixty-seven cents per ton; for any distance over two hundred and seventy-five miles and not to exceed two hundred and eighty-five miles, one dollar and sixty-nine cents per ton; for any distance over two hundred and eighty-five miles and not to exceed two hundred and ninety-five miles, one dollar and seventy-one cents per ton; for any distance over two hundred and ninety-five miles and not to exceed three hundred and five miles, one dollar and seventy-four cents per ton; for any distance over three hundred and five miles and not to exceed three hundred and fifteen miles, one dollar and seventy-five cents per ton; for any distance over three hundred and fifteen miles and not to exceed three hundred and twenty-five miles, one dollar and seventy-eight cents per ton; for any distance over three hundred and twenty-five miles and not to exceed three hundred and thirty-five miles, one dollar and eighty cents per ton; for any distance over three hundred and thirty-five miles and not to exceed three hundred and forty-five miles, one dollar and eighty-three cents per ton; for any distance over three hundred and forty-five miles and not to exceed three hundred and fifty-five miles, one dollar and eighty-five cents per ton; for any distance over three hundred and fifty-five miles and not to exceed three hundred and sixty-five miles, one dollar and eighty-seven cents per ton; for any distance over three hundred and sixty-five miles and not to exceed three hundred and seventy-five miles, one dollar and ninety cents per ton; for any distance over three hundred and seventy-five miles and not to exceed three hundred and eighty-five miles, one dollar and ninety-two cents per ton; for any distance over three hundred and eighty-five miles and not to exceed three hundred and ninety-five miles, one dollar and ninety-four cents per ton; for any distance over three hundred and ninety-five miles and not to exceed four hundred and five miles, one dollar and ninety-six cents per ton; for any distance over four hundred and five miles and not to exceed four hundred and fifteen miles, one dollar and ninety-eight cents per ton; for any distance over four hundred and fifteen miles and not to exceed four hundred and twenty-five miles, two dollars and one cent per ton; for any distance over four hundred and twenty-five miles and not to exceed four hundred and thirty-five miles, two dollars and three cents per ton; for any distance over four hundred and thirty-five miles and not to exceed four hundred and forty-five miles, two dollars and six cents per ton; for any distance over four hundred and forty-five miles and not to exceed four hundred and fifty-five miles, two dollars and eight cents per ton; for any distance over four hundred and fifty-five miles and not to exceed four hundred and sixty-five miles, two dollars and ten cents per ton; for any distance over four hundred and sixty-five miles and not to exceed four hundred and seventy-five miles, two dollars and thirteen cents per ton; for any distance over four hundred and seventy-five

miles and not to exceed four hundred and eighty-five miles, two dollars and fifteen cents per ton; for any distance over four hundred and eighty-five miles and not to exceed four hundred and ninety-five miles, two dollars and seventeen cents per ton.

§ 3071. **Penalty for violation.** Any railroad company violating any of the provisions of the last section shall be subject to a fine of not less than twenty-five dollars per day for each and every day during which such violation shall continue, to be recovered by any person prejudiced or suffering loss or damage by such violation. § 2, c. 101, 1893.
§ 2, c. 93, 1895.

§ 3072. **Duty of attorney general.** It shall be the duty of the attorney general or of the state's attorney of any county in which an action arises against any railroad company for a violation of any of the provisions of section 3070, upon demand of the board of railroad commissioners to commence and prosecute all actions necessary for the enforcement of the provisions of such section. § 3, c. 93, 1895.

CHAPTER 13.

WAGON ROAD CORPORATIONS.

§ 3073. **How wagon road laid out.** When a corporation is formed for the construction and maintenance of a wagon road the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of commissioners of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings together with a map of the road to the board of commissioners of the county as provided in the succeeding section. § 486, Civil C.

§ 3074. **Map filed. Record of approval.** When the route is surveyed a map thereof must be submitted to and filed with the board of commissioners of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs and its width, which must in no case exceed one hundred feet, and the board of county commissioners must either approve or reject the survey. If approved, it must be entered of record on the journal of the board; but the board of county commissioners must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as, to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over and by its road and its toll gates as not to hinder or obstruct the use of the same. § 487, Civil C.

§ 3075. **Bridges and ferries. Tolls.** All wagon road corporations may bridge or keep ferries on streams on the line of their road and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries or bridges as are fixed by the board of commissioners of the proper county through which the road passes or in which the ferry or bridge is situated, subject, however, to the limitation of rates of ferriage prescribed in the general law upon ferries; but in no case must the tolls be more than sufficient to pay fifteen per cent per annum on the cost of con- § 488, Civil C.

struction after paying for repairs and other expenses for attending to the roads, bridges and ferries. If tolls, other than as herein provided are charged or demanded, the corporation forfeits its franchise and must pay to the party so charged one hundred dollars as liquidated damages.

§ 489, Civil C. **§ 3076. No tolls where public highway used.** When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a tollgate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

§ 490, Civil C. **§ 3077. Toll rates posted.** The corporation must affix and keep up at or over each gate or in some conspicuous place so as to be conveniently read a printed list of the rates of toll levied and demanded.

§ 491, Civil C. **§ 3078. Passage prevented until tolls paid.** Each toll gatherer may prevent from passing through his gate persons leading or driving animals or vehicles subject to toll, until they shall have paid respectively, the tolls authorized to be collected.

§ 492, Civil C. **§ 3079. Penalty for receiving illegal toll.** Every toll gatherer who at any gate unreasonably hinders or delays any traveler or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved.

§ 493, Civil C. **§ 3080. Passing around gate. Penalty.** Every person who, to avoid the payment of the legal toll, with his team, vehicle or horse turns out of a wagon, turnpike or plank road, or passes any gate thereon on the ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

§ 494, Civil C. **§ 3081. Penalty for injuring road.** Every person who:
 1. Willfully breaks, cuts down, defaces or injures any milestone or post on any wagon, turnpike or plank road; or,
 2. Willfully breaks or throws down any gate on such road; or,
 3. Digs up or injures any part of such road or anything thereunto belonging; or,
 4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars in addition to the damages resulting from his wrongful act.

§ 495, Civil C. **§ 3082. How revenue applied.** The entire revenue from the road shall be appropriated:

1. To repayment to the corporation of the costs of its construction together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and,

2. To the payment of the dividend among its stockholders, as provided in section 3075. When the repayment of the costs of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay a dividend of twelve per cent per annum and incidental expenses and to keep the road in good repair.

§ 496, Civil C. **§ 3083. When mortgage valid.** The corporation may mortgage or hypothecate its road and other property for funds with which

to construct or repair its roads, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances and then only after an affirmative vote of two-thirds of the capital stock subscribed.

§ 3084. **Natural person like corporation.** When a wagon, § 497, Civil C. turnpike or plank road is constructed, owned or operated by any natural person, this chapter is applicable to such persons in like manner as it is applicable to corporations.

CHAPTER 14.

INSURANCE CORPORATIONS.

ARTICLE 1.—GENERAL PROVISIONS.

§ 3085. **Terms defined.** When consistent with the context and not obviously used in a different sense the term “company” or “insurance company,” as used herein, includes all corporations, associations, partnerships or individuals engaged as principals in the business of insurance; the word “domestic” designates those companies incorporated or formed in this state and the word “foreign” when used without limitation includes all those formed by authority of any other state or government.

ARTICLE 2.—PROVISIONS COMMON TO ALL DOMESTIC INSURANCE COMPANIES.

§ 3086. **Subject to what provisions of law.** All insurance companies now or hereafter incorporated or formed by authority of any law of this state, except when otherwise expressly provided, may exercise the powers and shall be subject to the duties and liabilities provided by this chapter. The general provisions of law relating to the powers, duties and liabilities of corporations shall apply to all incorporated domestic insurance companies, so far as such provisions are pertinent and not in conflict with other provisions of law relating to such companies.

§ 3087. **How and for what purpose formed.** Any number of persons, not less than seven, may form a corporation to carry on the business of insurance, either upon the stock or mutual plan, against loss or damage by fire, lightning, cyclone, tornado or hail, or the risks of inland navigation and transportation, or to make insurance upon the lives of persons and every insurance pertaining thereto, and against accidental injuries including the granting, purchasing and paying of annuities and indemnities and to transact fidelity insurance and corporate suretyship. An insurance company incorporated under the provisions of this chapter shall have power to make insurance of any of the kinds hereinbefore mentioned which shall have been expressed in its articles of incorporation.

§ 1, c. 69, 1895.
§ 1, c. 73, 1891.
am'd.

§ 4, c. 69, 1885.
am'd.

§ 3088. Articles. Contents. The articles of incorporation shall set forth in addition to what is required to be set forth in section 2861 the kind of insurance proposed to be made and whether on the stock or mutual plan, the period for the commencement and termination of its fiscal year and the period for which it is incorporated, not to exceed thirty years, and shall be filed in the office of the commissioner of insurance. Any name not previously in use by an existing corporation may be adopted, but the words "insurance company," or, if the business is to be conducted upon the mutual principle, the words "mutual insurance company" shall constitute a part of such name. No certificate shall be granted by the insurance commissioner, as hereinafter provided, if, in his judgment, the name adopted too closely resembles the name of an existing corporation, or is liable to mislead the public.

§ 4, c. 69, 1885.
am'd.

§ 3089. Qualification of directors. Residence. One-third of the directors and all of the executive officers of a domestic insurance company must be residents of this state and each of the directors of such a company, if it has a capital stock, must be the owner in his own right of stock of such company worth at par at least five hundred dollars.

§ 11, c. 69, 1885.
am'd.

§ 3090. Examination of articles by attorney general. Examination by commissioner of insurance. Certificate. The articles of incorporation shall be examined by the attorney general and if found conformable to this article and not inconsistent with the constitution and laws of this state, shall be certified by him to the commissioner of insurance, who shall thereupon make an examination to ascertain whether the company has in all respects complied with the requirements of law, according to the nature of the business proposed to be transacted by it and if satisfied by such examination that the corporation has complied with the law he shall deliver to such corporation a certified copy of the articles of incorporation and a certificate to the effect that such corporation has complied with all requirements of law, which, on being filed in the office of the register of deeds of the county where the principal office of the corporation is located, shall be its authority to commence business and issue policies; and such certified copy of the articles of incorporation and of such certificate may be used for or against such company with the same effect as the originals, and shall be conclusive evidence of the fact of the organization of such corporation.

§ 2, c. 69, 1885.
§ 1, c. 69, 1889.
am'd.

§ 3091. Reinsurance. Any domestic insurance company shall have power to effect reinsurance of any risks taken by it.

§ 5, c. 69, 1885.
am'd.

§ 3092. Limitation on trade. No company organized under this chapter shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, except such as may have been insured by such company and are claimed to be damaged by reason of the risk insured against.

§ 10, c. 69, 1885.
§ 3, c. 69, 1889.
am'd.

§ 3093. Limitation on purchase and conveyance of real estate. No domestic insurance company shall purchase, hold or convey real estate except for the purpose and in the manner herein set forth, to-wit:

1. Such as shall be requisite for its convenient accommodation in the transaction of its business; or,
2. Such as shall have been mortgaged to it in good faith as security for loans previously contracted, or for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in legitimate business, or for money due; or,

4. Such as shall have been purchased at sales upon judgment or mortgage foreclosures obtained or made for such debts.

§ 3094. How capital and surplus may be invested. A domestic insurance company may invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds or mortgages on improved unincumbered real estate within this state, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policies made payable to the company as its interest may appear and also in the bonds of this state, or bonds or treasury notes of the United States, and also in the bonds of any county or incorporated city in this state, authorized to be issued by the legislative assembly, and loan such capital and funds, or any part thereof, on the security of such bonds, treasury notes, or upon bonds or mortgages as aforesaid, and change and reinvest the same in like securities as occasion may from time to time require; but the surplus money over and above the capital stock of such insurance company may be invested in or loaned upon the pledge of bonds of the United States, or any of the states, or stocks, bonds or other evidence of indebtedness of any solvent dividend paying institution, incorporated under the laws of this state or of the United States, except its own stock; provided, always, that the market value of such stock, bonds or other evidence of indebtedness shall be at all times during the continuance of such loan at least ten per cent more than the amount loaned thereon. No domestic insurance company shall invest or loan its capital or the funds accumulated in the course of its business, or any part thereof, except as provided in this section.

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9, c. 69, 1885.
2, c. 69, 1889.
am'd.

§ 3095. Dividends only from surplus profits. Profits, how estimated. No domestic insurance company shall make any dividends except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount of premiums on all unexpired risks and policies, which amount so reserved, is hereby declared to be unearned premiums; and there shall also be reserved all sums due the company on bonds, mortgages, stocks and book accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of the profits, and upon which suit for foreclosure or collection has been commenced, or which after judgment has been obtained thereon shall have remained more than one year unsatisfied and on which interest shall not have been paid.

§ 13, c. 69, 1885.
am'd.

§ 3096. Penalty for violation of section 3094. Any director or officer making or authorizing an investment or loan in violation of section 3094 shall be personally liable to the stockholders for any loss occasioned thereby. If a company is under liability for losses equal to its net assets and the president and directors, knowing it, make or assent to further insurance, they shall be personally liable for any loss under such insurance. If the directors allow to be insured on a single risk a larger sum than the law permits they shall be liable for any loss thereon above the amount they might lawfully insure, unless the excess is reinsured as required in section 3117.

ARTICLE 3.—PROVISIONS PECULIAR TO DOMESTIC STOCK INSURANCE COMPANIES.

§ 6, c. 69, 1885.
am'd.

§ 3097. Capital stock required. No stock company shall be incorporated under this chapter unless it has a capital stock of at least one hundred thousand dollars, twenty-five per cent of which must be paid in previous to the issuance of any policy and the residue within twelve months from the time of filing the articles of incorporation. No fire, cyclone, tornado, hail, marine, life or accident insurance company of any other state, territory or nation shall do business in this state unless it has a paid up capital stock of at least two hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes and reinsurance of all outstanding risks.

§ 8, c. 69, 1885.
am'd.

§ 3098. Opening book for subscriptions. The individuals associated for the purpose of organizing an insurance company under this article, after having filed the articles of incorporation as required by section 3088, may open books for subscriptions to the capital stock of such corporation and keep the same open until the full amount specified in the articles of incorporation is subscribed.

§ 3099. Notice to company when capital is impaired. Whenever it appears to the commissioner of insurance that the capital of a domestic insurance company is impaired to the extent of one-fourth or more on the basis fixed in section 3095 he shall notify the company that its capital is legally subject to be made good in the mode provided by section 3100, and if such company shall not within three months after such notice satisfy him that it has fully repaired its capital, or reduced its capital as provided in section 3101, he shall institute proceedings against it in accordance with section 3128.

§ 3100. How capital made good. Forfeiture of shares. Whenever the net assets of the company do not amount to more than three-fourths of its original capital, it may make good its original capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable and may be canceled by a vote of the directors and new shares issued to make up the deficiency. If such company shall not within three months after notice from the commissioner of insurance to that effect make good its capital as aforesaid, or reduce the same as allowed by the next section, its authority to transact new business of insurance shall cease.

§ 36, c. 69, 1885.
am'd.

§ 3101. Capital stock reduced. Examination and certificate of commissioner. When the capital stock of a company is impaired, such company may upon a vote of a majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law. But no part of its assets and property shall be distributed to its stockholders. Within ten days after such meeting the company shall submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of such reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary and a majority of its directors. The commissioner shall examine the facts in the case, and if the same conform to law, and in his judgment the proposed reduction may be made without prejudice to the public he

shall indorse his approval upon the certificate. Upon filing the certificate so indorsed the company may transact business upon the basis of such reduced capital, as though the same was its original capital, and its articles of incorporation shall be deemed to be amended to conform thereto; and the commissioner of insurance shall issue his certificate to that effect. Such company may by a majority vote of its directors after such reduction require the return of the original certificates of stock held by each stockholder in exchange for new certificates in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

§ 3102. Capital less than liabilities. Notice not to issue policies. When the actual funds of a domestic life insurance company exclusive of its capital, are not of a net cash value equal to its liabilities the commissioner of insurance shall notify such company and its agents to issue no new policies until its funds become equal to its liabilities.

§ 3103. Transfer of stock pending examination does not release liabilities. No transfer of the stock of any domestic insurance company made during the pendency of any examination will release the party making the transfer from his liability for loss which may have occurred previous to the transfer.

§ 32, c. 69, 1885.
§ 7, c. 69, 1889.
am'd.

ARTICLE 4. — PROVISIONS PECULIAR TO DOMESTIC MUTUAL INSURANCE COMPANIES.

§ 3104. Amount of subscribed insurance required. No policy shall be issued by a purely mutual insurance company until not less than two hundred thousand dollars of insurance in not less than one hundred separate risks have been subscribed for and entered on its books; but the provisions of this section shall not apply to county mutual insurance companies.

§ 41, c. 69, 1885.

§ 3105. Insured a member. Notice of meetings. Every person insured by a domestic mutual insurance company, other than life, shall be a member while his policy is in force entitled to one vote for each policy he holds and shall be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt or certificate of renewal as follows, to-wit:

The assured is hereby notified that by virtue of this policy he is a member of the.....mutual insurance company, and that the annual meetings of such company are held at its home office on the.....day of.....in each year at....o'clock.

The blanks shall be duly filled and the same shall be deemed a sufficient notice.

§ 3106. Same. Every person insured by a domestic mutual life insurance company shall be a member entitled to one vote and one vote additional for each five thousand dollars of insurance in excess of the first five thousand dollars, and shall be notified of its annual meetings in the manner provided in the last section.

§ 3107. Manner of voting by proxy. Members may vote by proxy dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person shall be allowed as proxy or otherwise to cast more than fifty votes, and no officer shall

himself, or by another, ask for, receive, procure to be obtained or use a proxy vote; provided, that this section shall not apply to state mutual hail insurance companies.

§ 3108. Premium. Contingent liability stated on policy. Mutual insurance companies shall charge and collect upon their policies the full mutual premium in cash or notes absolutely payable and may in their by-laws fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by their cash funds; provided, that such contingent liability of a member shall not be less than a sum equal to and in addition to the cash premium written in his policy. The total amount of the liability of a policy holder shall be plainly and legibly stated upon the back of each policy.

§ 3109. Reserve fund, how used. Any mutual insurance company may at a meeting called for that purpose provide for the accumulation of a permanent fund by reserving a portion of the net profits to be invested and be a reserve for the security of the insured. Such reservation shall not exceed twenty per cent of said net profits and when the fund so accumulated amounts to two per cent of the sum insured by all policies in force the whole of the net profits shall be divided among the insured at the expiration of their policies. The permanent fund so accumulated shall be used for the payment of losses and expenses, whenever the cash funds of the company in excess of an amount equal to its liabilities are exhausted; and whenever the said fund is drawn upon, reservation of profits as aforesaid shall be renewed or continued until the limit of accumulation as herein provided is reached.

§ 3110. Members entitled to share of net profits. Every member of a mutual insurance company, except a mutual life insurance company, when his policy expires shall be entitled to be paid in cash his share of the net profits or surplus accrued while his policy was in force; and shall in like manner be liable to pay his proportionate part of any assessments, which may be laid by the company in accordance with law and his contract on account of losses and expenses incurred while he was a member.

§ 3111. Distribution of surplus on life policies. Every domestic mutual life insurance company shall annually, or once in every two, three, four or five years, as it shall determine, and as may be conditioned in its policies make distribution of all surplus it may have accumulated since its last dividend of surplus. By such surplus is here intended all accumulations since its last distribution of surplus above its debts and reserve computed as provided in section 3095. The distribution shall be upon what is known as the contribution plan and each member upon whose policy no premium is overdue and unpaid shall be entitled to the amount contributed by his policy to such surplus. Policies which have become payable before the time when such distribution is made and after the date of the last previous distribution shall share in the same equitably and proportionally.

§ 3112. Assessments, when and how made. Whenever a mutual insurance company other than life, is not possessed of cash funds above its reinsurance reserve sufficient for the payment of incurred losses and expenses it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liability.

The company shall cause to be recorded in a book kept for that purpose the order for such assessment together with a statement which shall set forth the condition of the company at the date of the order, the amount of its cash assets and of the notes of its policy holders, or other contingent funds liable to the assessment, the amount the assessment calls for and the particular losses or other liabilities it is made to provide for. Such record shall be made and signed by the directors who voted for the order before any part of the assessment is collected and any person liable to the assessment may inspect and take a copy of the same.

§ 3113. Making premium reserve good. Single assessment. Cancellation of policies. Double assessments. Re-insurance. When by reason of depreciation or loss of its funds, or otherwise, the cash assets of such a company after providing for its other debts are less than the required premium reserve upon its policies it shall make good the deficiency by assessment in the mode provided in the last section; or if the directors are of the opinion that the company is likely to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policy holder must equitably pay or receive in case of withdrawal from the company and having his policy canceled, the second what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policy holder shall pay or receive according to the first assessment and his policy shall then be canceled, unless he pays the further sum determined by the second assessment, in which case his policy shall continue in force; but in neither case shall a policy holder receive or have credited to him more than he would have received on having his policy canceled by a vote of the directors under the by-laws. If within two months after such alternative assessments have become collectible the amount of the policies whose holders have settled for both assessments is less than two hundred thousand dollars, the company shall cease to issue policies; and all policies whose holders have not settled for both assessments shall be void and the company shall continue only for the purpose of adjusting the deficiency or excess of premiums among the members and settling outstanding claims. No assessment shall be valid against a person who has not been duly notified thereof, within two years after the expiration or cancellation of his policy.

§ 3114. Directors personally liable for not making and collecting assessments. If the directors of any mutual insurance company shall neglect or omit for the space of six months to lay and use reasonable diligence to collect any assessment they are required to make, they shall be personally liable for all debts and claims then outstanding against the company, or that may accrue until such assessment is laid and put in process of collection. If the treasurer of such company unreasonably neglects to collect an assessment made by order of the directors and to apply the same to the payment of the claims for which it was made, he shall be personally liable to the party having such claims for the amount of the assessment; and he may repay himself out of any money afterwards received for the company on account of said assessment.

ARTICLE 5.—PROVISIONS PECULIAR TO FIDELITY INSURANCE COMPANIES.

§ 3115. Fidelity insurance and corporate suretyship. May be sole surety on bonds. Limit of liability. Any company organized to transact fidelity insurance and corporate suretyship and authorized to do business in this state may make contracts of insurance to guarantee the fidelity of persons holding positions of trust in private or public employment or responsibility and may, if accepted and approved by the court, magistrate, obligee or person competent to approve such bond, act as surety upon the official bond or undertaking in civil procedure of any person or corporation to the United States, to the state of North Dakota, or to any county, city, town, court, judge, magistrate or public officer or to any corporation or association public or private; and may also act as surety upon any bond or undertaking to any person or corporation conditioned upon the performance of any duty or trust or for the doing or not doing of anything in such bond specified and upon bonds to indemnify against loss any person who is responsible as surety upon a written instrument, or otherwise for the performance by others of any office, employment, contract or trust. When by law two or more sureties are required upon any obligation such company is authorized to insure, it may act as sole surety thereon and may be accepted as such by the court, magistrate or other officer or person authorized to approve the sufficiency of such bond or undertaking; and nothing contained in these codes shall be construed to forbid the acceptance of a qualified foreign corporation as joint or sole surety on any such bond. No such company shall incur in behalf or on account of any one person, partnership, association or corporation a liability for an amount larger than one-tenth of its paid up capital, unless it shall be secured from loss thereon beyond that amount by deposit with it in pledge or conveyance to it in trust for its protection of property equal in value to the excess of its liability over such limit.

ARTICLE 6.—PROVISIONS PECULIAR TO FOREIGN INSURANCE COMPANIES.

§ 3116. Conditions of admission. Articles and statement filed. Must be legally organized. Appoint commissioner its attorney for service. Resident agents. No foreign insurance company shall directly or indirectly take any risk or transact the business of insurance in this state until:

1. It shall deposit with the insurance commissioner a certified copy of its articles of incorporation and a statement of its financial condition and business in such form and detail as he may require, signed and sworn to by its president and secretary or other proper officers.

2. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than is required by section 3097 and, if a mutual company, that its assets are not less than is required by section 3104; that such capital or net assets are well invested and

immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

3. It shall by a duly executed instrument, filed in his office, constitute and appoint the commissioner of insurance and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served on the company and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the company. Whenever process against any foreign insurance company, doing business in this state, shall be served upon the commissioner of insurance, he shall forthwith mail a copy of such process, postage prepaid, and directed to such company at its principal place of business, or if it is a foreign company, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the commissioner of insurance. As a condition of valid and effectual service the plaintiff shall pay to the commissioner of insurance at the time of service the sum of two dollars, which the plaintiff shall recover as taxable costs if he shall prevail in his action. The commissioner shall keep a record of all such process which shall show the time and hour of service.

4. It shall appoint as its agents in this state only residents thereof.

ARTICLE 7.—PROVISIONS COMMON TO ALL INSURANCE COMPANIES.

§ 3117. **Limit of risk.** No company organized under this chapter, or transacting business in this state shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent of its paid up capital, exclusive of any guarantee, surplus, or special reserve fund, unless the excess shall be reinsured in some other good reliable company.

§ 7, c. 69, 1885.
am'd.

§ 3118. **Limit of risk in single city.** No fire insurance company shall insure in any one town or city property, other than dwelling houses, to an amount exceeding its net assets, and when from any cause the company has at risk in any town or city an amount as aforesaid in excess of its net assets it shall forthwith by reinsurance or by cancellation of policies and return of unearned premiums thereon to the insured reduce the amount of the insurance to the authorized limit. But no policy shall be canceled under the provisions of this section until after notice to the holder.

§ 3119. **Annual statement. Publication thereof.** Every insurance company doing business in this state must transmit to the commissioner of insurance a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered not later than the first Monday of February in each year. Foreign insurance companies shall have until the following first day of December to transmit their statements of business, other than that taken in the United States. Such statement must be published at least three times in a newspaper of general circulation printed and published in each judicial district of the state in which such insurance company shall have an agency. Statements

16, c. 69, 1885.
10, c. 69, 1889.
1, c. 78, 1890.
1, c. 70, 1893.
am'd.

for publication shall be made out on blanks furnished by the commissioner of insurance and the certificate of authority of the commissioner of insurance for the company to do business in this state shall be published in connection with such statement. Proof of publication shall be filed with the commissioner of insurance in all cases within four months from the time of the filing of the annual statement. Such publications shall be made at half of the authorized rate for publishing legal notices. The commissioner of insurance shall select three newspapers of general circulation, published in each of the judicial districts, from which such company shall select one in which such statements shall be published.

§ 17, c. 69, 1885.
am'd.

§ 3120. Contents of annual statement. The annual statement required by the last section must be in form and state particulars as follows:

1. The name of the company and where located.
2. The amount of capital stock actually paid in cash.
3. The property or assets of the company, specifying:
 - (a) The value, as nearly as may be, of the real estate owned by the company.
 - (b) The amount of cash on hand in the office.
 - (c) The amount of cash on deposit in banks.
 - (d) The amount of cash in the hands of agents and in course of transmission.
 - (e) The amount of loans secured by bonds and mortgages, being first lien on real estate worth double the amount of the sum loaned thereon.
 - (f) The amount of stocks and bonds owned by the company, specifying the amount, number of shares, and the market value of each kind of stock on the day of making the statement.
 - (g) The amount of stock held by it as collateral security for loans with the amount loaned on each kind of stock, the par value and market value thereof on the day the statement is made.
 - (h) The amount of all other sums due the company.
4. The liabilities of such company, specifying:
 - (a) The amount of losses unpaid.
 - (b) The amount of claims for losses resisted by the company.
 - (c) The whole amount of unearned premiums on outstanding risks.
 - (d) The amount of dividends declared and due and remaining unpaid.
 - (e) The amount of dividends, if any, declared and not yet due.
 - (f) The amount of money borrowed and remaining unpaid, and the security, if any, given for the payment thereof.
 - (g) The amount of all other existing claims.
5. The income of the company during the preceding year, specifying:
 - (a) The whole amount of interest received, stating separately the amount of interest received on loans in the state of North Dakota.
 - (b) The whole amount of cash premiums received, stating separately the amount of premiums received on policies written in the state.
 - (c) The whole amount of income received from all sources.
6. Expenditures during the preceding year, specifying:
 - (a) The whole amount of losses paid during the preceding year stating how much of the same accrued prior and how much subse-

quent to the date of the preceding statement; also stating separately the amount of losses paid upon risks taken in this state and how much accrued prior and how much subsequent to the preceding statement.

(b) The amount of dividends paid during the preceding year.

(c) The whole amount of fees and commissions paid to officers and agents during the preceding year.

(d) The amount of taxes paid during the preceding year, stating separately the amount paid in this state.

(e) The amount of fees paid the commissioner of insurance of this state.

(f) The whole amount paid for salaries for officers and agents during the preceding year.

(g) The whole amount of all other expenditures.

7. Such statement shall further specify:

(a) The gross amount of risks taken during the preceding year, stating the amount in this state separately.

(b) The whole amount of risks outstanding.

(c) The whole amount of losses incurred during the year, including those claims not yet due, stating separately those incurred in this state.

(d) The number of agents in this state.

§ 3121. Statements verified. Duty of commissioner. Such statements must be verified by the signature and oath of the president or vice president and of the secretary of a domestic insurance company, and by the manager or general agent of a foreign company doing business in this state; and it shall be the duty of the commissioner of insurance to cause the information contained in such statements to be arranged in a tabular form and printed annually for distribution to the companies doing business in this state and for transmission to the legislative assembly with his biennial report. § 19, c. 69, 1885.
am'd.

§ 3122. Statements of receivers. It shall be the duty of all receivers of insurance companies on or before the thirtieth day of June of each year and at any other time, when required by the commissioner of insurance, to make and file annually statements of their assets and liabilities and of their income and expenditures in the same manner and form as the officers of such companies are required by law to make and for refusal or neglect to make and file the same they shall be subject to the same penalty. § 37, c. 69, 1885.
am'd.

§ 3123. Inquiry into condition of companies. The commissioner of insurance is authorized and empowered to address any inquiries to any insurance company doing or applying for permission to do business in this state in relation to its doings or condition or any other matter connected with its transactions and it shall be the duty of any such company so addressed to reply promptly in writing to any such inquiries. § 15, c. 73, 1891.
am'd.

§ 3124. Agents must not act without certificate. No agent shall act for any insurance company directly or indirectly in taking risks or transacting the business of insurance without procuring from the commissioner of insurance a certificate of authority, stating that such corporation or company has complied with all the requisites of this chapter. The statements and evidences of investment required by this chapter shall be renewed from year to year in such manner and form as are required by this chapter and the commissioner of insurance on being satisfied that the capital, securities and invest- § 25, c. 69, 1885.
am'd.

ments remain secure as hereinbefore provided shall furnish a renewal of the certificate as aforesaid.

§ 3125. Examination before granting certificates. When domestic companies examined. Examination of foreign companies. Expenses. Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the commissioner of insurance shall be satisfied by such examination and evidence as he sees fit to make and require that such company is duly qualified under the laws of the state to transact business therein. As often as once in two years he shall personally, or by his deputy or chief clerk, visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the law. He shall also make an examination of any such company whenever he deems it prudent to do so or upon the request of five or more of the stockholders, creditors, policy holders or persons pecuniarily interested therein who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in an unsound condition. Whenever he deems it prudent for the protection of policy holders in this state he shall in like manner visit and examine, or cause to be visited or examined by some competent person appointed by him for that purpose any foreign insurance company applying for admission, or already admitted, to do business by agencies in this state and such company shall pay the proper charges incurred in such examination, including the expense of the commissioner or his deputy. For the purposes aforesaid the commissioner or person making the examination shall have free access to all books and papers of an insurance company that relate to its business and to the books and papers kept by any of its agents and may summon as witnesses and examine under oath the directors, officers, agents and trustees of any such company and any other persons in relation to its affairs, transactions and condition.

§ 28, c. 69, 1885.
am'd.

§ 3126. Authority revoked for false statement. When revocation set aside. If the commissioner of insurance has, or shall have at any time after examination reason to believe that any annual statement or other report, required or authorized by this article made or to be made out by an officer or agent of any insurance company is false, it shall be the duty of said commissioner of insurance immediately to revoke the certificate of authority of such company and mail a copy of such revocation to such company, and to the agents thereof in this state and such company and its agents after such notice shall discontinue the issuance of any new policies or the renewal of any policy previously issued; and such revocation shall not be set aside nor any new certificate of authority be given until satisfactory evidence shall have been furnished to said commissioner of insurance that such company is in substance and in fact in the condition set forth in such statement or report and that all requirements of this article have been fully complied with.

§ 12, c. 73, 1891.
am'd.

§ 3127. Commissioner must ascertain net cash value of life policies. The commissioner of insurance shall, at the expense of the company, as soon as practicable after statements are filed, proceed to ascertain the net cash value of all life insurance policies in force. The commissioner of insurance, may however, accept such valuation from the proper officer of the company or the insurance officer of the state in which such company is located, should he deem

it expedient so to do. When the actual funds of any life or accident insurance company doing business in this state are not of a net value equal to the net value of its policies according to the combined experience or actuaries' rate of mortality, with interest at four per cent per annum, it shall be the duty of the commissioner of insurance to give notice to such company and its agents to discontinue the issuance of new policies in this state until its funds have become equal to its liabilities, valuing its policies as aforesaid. Any officer or agent, who after such notice has been given issues or delivers a new policy from and in behalf of such company before its funds have become equal to its liabilities as aforesaid shall forfeit for each offense a sum not exceeding one thousand dollars.

§ 3128. When and how authority revoked. Foreign company. Domestic company. Injunction. Power of court. If the commissioner of insurance is of opinion upon examination or other evidence that a foreign insurance company is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination, or to perform any legal obligation in relation thereto or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the commissioner. If upon examination he is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers or has failed to comply with any provisions of law or that its condition is such as to render its further proceedings hazardous to the public or its policy holders, he shall apply to the district court of the county in which the principal office of the company is located to issue an injunction restraining it in whole or in part from further proceeding with its business. The court or judge may, in discretion, issue an injunction forthwith or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify such injunction or make it perpetual, and may make all orders and decrees needful in the premises and may appoint agents or receivers to take possession of the property and effects of the company and to settle its affairs according to the course of proceedings in equity.

§ 3129. Insurance by resident agents only. No insurance company shall do business in this state, except through its authorized agents who must be residents of and have their office or place of business in this state. All policies not written in accordance with the foregoing provisions shall be deemed a violation of this article. §§ 1,2, c.76, 1890.
am'd.

§ 3130. Penalty for not making statement. For false statement. Any insurance company doing business in this state that neglects to make the statements in the manner and within the time in this article required shall forfeit one hundred dollars for each day's neglect, and upon notice by the insurance commissioner to that effect, its authority to do new business shall cease while such default continues and every such company that willfully makes false statements shall be liable to a fine of not less than five hundred dollars nor more than one thousand dollars. Any new business done by the

insurance company after neglect to make the required statements shall be deemed to be done in violation of law.

§ 3131. Penalty when there is no specific provision. For violation of any provision of this chapter when no penalty is specifically provided for herein the offender shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

§ 39, c. 69, 1885.
am'd.

§ 3132. Fees. There shall be paid by every company doing business in this state, except county mutual insurance companies, the following fees:

Upon filing articles of incorporation, or copies thereof, twenty-five dollars.

Upon filing the annual statement, ten dollars.

For each certificate of authority and certified copy thereof two dollars.

For every copy of any paper filed in the insurance department, the sum of twenty cents per folio; and for affixing the official seal on such copy and certifying the same, the sum of one dollar.

For official examination of companies under this article the actual expense incurred, not to exceed ten dollars per day.

§ 20, c. 73, 1891.
am'd.

§ 3133. Same conditions imposed on companies of other states as they impose on domestic companies. Whenever the laws of any other state of the United States or foreign country shall require of insurance companies incorporated under the laws of this state, or of the agent thereof, any deposits of securities in such state for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificate of authority, license or fees greater than the amount required for such purposes from similar companies of other states by the then existing laws of this state, then and in every such case, all insurance companies of such states establishing or having heretofore established an agency in this state, shall be and are hereby required to make the same deposit for a like purpose with the state treasurer of this state, and to pay to the commissioner of insurance an amount equal to the amount of such charges and payment imposed by the laws of such other states upon the companies of this state and the agents thereof.

ARTICLE 8. — COUNTY MUTUAL COMPANIES.

§ 1, c. 67, 1887.
§ 1, c. 77, 1890.
am'd.

§ 3134. Who may form company. Any number of persons, not less than fifty, residing in any five adjoining counties in this state, who collectively own property of not less than fifty thousand dollars in value which they desire to insure, or any number of persons not less than twenty-five, residing in any one county, owning property of not less than twenty-five thousand dollars in value which they desire to insure, may form a corporation for mutual insurance against loss or damage by fire, lightning, hail and cyclone, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as herein otherwise provided. The principal office of the company must be located within the limits of the county or counties in which the incorporators reside. The name of the county together with the word county shall be embraced in the corporate name of the company when organized by the residents of a single county.

§ 3135. General management in board of directors. **Term of office.** The general management of the business of such company shall be vested in a board of not less than five nor more than thirteen directors, each of whom shall during his term of office be a policy holder in the company. Such directors shall be elected annually and shall hold their office for one year and until their successors are elected and qualified. § 2, c. 67, 1887. am'd.

§ 3136. Separate funds for hail and other insurance. In all cases of insurance against loss or damage by hail, it shall be the duty of such company to keep a separate and distinct record of all interest, premiums and policies of insurance relating to such hail insurance and no note, premium, undertaking, or policy of insurance which shall be received, issued or delivered for any insurance against loss by hail shall be used in any connection with insurance against loss or damage by reason of any other cause, and no moneys, premiums or funds arising out of or received for insurance against loss or damage by hail shall be used in the payment of any loss or damage by reason of fire, lightning, or cyclone, and no moneys, premiums or funds arising out of or received for insurance against loss or damage by fire, lightning and cyclone shall be used in the payment of any loss or damage by hail. § 5, c. 67, 1887. am'd.

§ 3137. Cash premium or note in hail insurance. Conditions of policy. Every person insuring grain against loss or damage by hail shall, except when a cash premium is paid, execute and deliver to such company his promissory note, bearing even date with the policy issued to him therefor, together with such security as may be required by the board of directors or the by-laws of such company. In case of insurance against loss or damage by hail the directors of such company may issue policies signed by the president and secretary, agreeing in the name of the company to pay all losses or damages by hail, or such pro rata share of such loss or damage as can be paid out of the highest limit of the liabilities of the members, which liabilities shall be established by the by-laws of such company before the issuing of any policy of insurance against loss or damage by hail. § 6, c. 67, 1887.

§ 3138. Adjusters of hail losses. Notice of loss. Disagreement of adjuster and insured. It shall be the duty of the board of directors to appoint one or more adjusters, prescribe their duties and fix their compensation, requiring them to report to the president or secretary upon all losses or damage by hail adjusted by them. Upon any loss or damage by hail, the party sustaining the same shall immediately notify the secretary or a duly appointed adjuster of such loss or damage. In case the adjuster and party sustaining the loss cannot agree the claimant may then appeal as provided for in section 3141 and notice of loss or damage by hail shall be the same as is prescribed in said section. § 7, c. 67, 1887.

§ 3139. By-laws may provide sinking fund for different departments. Any company organized under this article may provide in its by-laws for creating a fund of not to exceed fifteen thousand dollars in the hail department and of not to exceed three thousand dollars in the fire, lightning and cyclone department, the by-laws to set forth the manner in which such funds shall be created and the purpose to which they shall be applied. § 8, c. 67, 1887. am'd.

3140. Undertaking given, if other than hail insurance. **Cash payment.** Every person insured against loss or damage by § 9, c. 67, 1887. am'd.

fire, lightning and cyclone shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns, to pay his pro rata share to the company of all losses or damage by fire, lightning and cyclone, which may be sustained by any member thereof and every such undertaking shall within five days after the execution thereof be filed with the secretary in the office of the company and shall remain on file in the office, except when required to be produced in court as evidence. He shall also at the time of receiving such insurance pay such percentage in cash, or such reasonable sum named in the policy as may be required by the rules and by-laws of the company.

§ 10, c. 67, 1887.
am'd.

§ 3141. Notice of loss. Contents. Committee to adjust.

Arbitration if disagreement. Every member of such company who may sustain loss or damage by fire, lightning or cyclone shall immediately notify the secretary of such company, or in case of his absence, the president thereof, specifying the property destroyed, the damage and cause thereof, which officer shall forthwith ascertain and adjust the amount of such loss or damage or forthwith convene the directors of such company whose duty it shall be to appoint a committee of not more than three members of such company to ascertain the amount of such loss and in case of the inability of the parties to agree upon the amount of such damage the claimant shall choose a disinterested party and the company shall choose a disinterested party who shall constitute a board of arbitration to settle such loss and in case these parties cannot agree they shall choose a third party to act with them and such board of arbitration shall have power to examine witnesses and to determine all matters in dispute and the decision of such board shall be final.

§ 11, c. 67, 1887.
am'd.

§ 3142. Property classified according to risk. Assessments. Basis of. When made.

Such company may classify the property insured at the time of issuing the policy thereon under different rates corresponding as nearly as may be to the nature of the risk attaching to the kind of property insured. Whenever the amount of any loss shall have been ascertained, if it exceeds the amount of the cash funds of the company applicable to the payment of such loss, the president shall convene the directors of the company who shall make an assessment sufficient at least to pay such loss upon all members of the company having property insured belonging to the same department as that on which the loss occurred. Such assessment shall be in proportion to the sums obtained by multiplying the amount of insurance granted by the several policies by the rate of premium applicable to the property covered by the policies respectively. No assessment for loss or damage by hail shall be made prior to the first day of September of the year in which the loss occurred.

§ 12, c. 67, 1887.

§ 3143. Secretary to give notice of and collect assessments.

It shall be the duty of the secretary, whenever such assessments shall have been completed, to notify every person composing such company by letter sent to his post office address of the amount of such loss and the sum due from him as his share thereof and the time when and to whom such payment is to be made and such time shall not be less than thirty days nor more than sixty days from the time of such notice. And no company organized under the provisions of this article shall be liable in any action at law or otherwise for the recovery of any loss or damage by hail before the fifteenth day of November of the year in which such loss occurred.

§ 3144. Suits for assessments. Individual liability of directors. Suits at law may be brought against any member of such company who shall refuse or neglect to pay any assessment made upon him under the provisions of this article, and the directors of such company who shall willfully neglect to perform the duties imposed upon them under the provisions of this article shall be liable in their individual capacity to the person sustaining such loss. § 13, c. 67, 1887. am'd.

§ 3145. What may be insured. No company formed under the provisions of this article shall insure any property beyond the limits of the district comprised in the formation of the company, nor shall it insure any property other than detached dwellings and their contents, farm buildings and their contents, school houses and school furniture therein, church buildings and furniture therein, live stock only on the premises or running at large and hay or grain in bin or stack, or growing grain against damage by hail, nor shall they insure any property within the limits of any incorporated city or village in this state. § 14, c. 67, 1887. am'd.

§ 3146. Election of directors. Proxy. Who members. The directors of each company so formed, shall be chosen by a vote at the annual election thereof which shall be held on the first Tuesday in June of each year and every member shall have one vote; but no person shall vote by proxy at such election; provided, that in any company organized under the provisions of this article whose policies of insurance shall not run for a longer period than one year, all persons holding policies of insurance therein during the year immediately preceding the annual election shall be considered as members of said company and shall be entitled to vote at such election. § 15, c. 67, 1887. am'd.

§ 3147. How member may withdraw. Any member of the company may withdraw therefrom at any time by giving ten days' notice in writing to the president or secretary thereof and by paying his share of all claims existing against the company at the expiration of the ten days. § 17, c. 67, 1887. am'd.

§ 3148. When nonresidents may become members. Cannot be directors. Nonresidents of any county in this state, owning property therein, may become members of any company incorporated under this article and shall be entitled to all rights and privileges pertaining thereto, except that they cannot become directors in such company. § 18, c. 67, 1887. am'd.

§ 3149. Term of existence. No company formed under this article shall continue for a longer term than thirty years. § 20, c. 67, 1887.

§ 3150. Annual statement submitted to members. The secretary of the company shall prepare and submit to the members thereof at each annual meeting a copy of the annual statement required to be filed with the commissioner of insurance as provided in section 3119.

§ 3151. Subject to preceding articles. In all other respects companies organized under this article shall be subject to the provisions of the preceding articles of this chapter.

ARTICLE 9. — CHATTEL MORTGAGES IN APPLICATIONS.

§ 3152. Chattel mortgage void unless on separate paper. It shall be unlawful for any insurance company, or any agent or solicitor therefor within this state, to take or procure to be taken § 1, c. 19, 1887.

upon the property to be insured, or any other property, a chattel mortgage, securing the payment of the premium due or to become due, including policy fees, or any part thereof, unless such chattel mortgage shall be printed or written upon a separate and distinct paper from the application, and no mortgage given in violation of the provisions of this section shall be valid or binding upon the party executing the same, but shall in all things be null and void.

§ 2, c. 19, 1887.
am'd.

§ 3153. Penalty for violating last section. Any insurance company, or any agent or solicitor thereof, violating the provisions of the last section shall be deemed guilty of a misdemeanor. And such company shall forfeit all its rights and privileges under its articles of incorporation.

CHAPTER 15.

MINING AND MANUFACTURING CORPORATIONS, ETC.

§ 3154. How formed. Term of existence. Corporations for mining, manufacturing and other industrial pursuits may be formed as provided in chapter eleven; and such corporations have all the rights and are subject to all the duties, restrictions and liabilities therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years.

§ 512, Civil C.
am'd.

§ 3155. Purpose must be stated. Cannot loan to stockholder. Penalty. The purposes for which any such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation, and it must not appropriate its funds to any other purpose nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation is made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan or misappropriation and interest and for all the debts of the corporation contracted before the repayment of the sum so loaned or misappropriated.

§ 513, Civil C.

§ 3156. Accounts. Publicity. Statement. Regular books of accounts of all the business of such corporation must be kept, which with the vouchers shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made by order of the directors and laid before the stockholders.

§ 514, Civil C.

§ 3157. Stockholders liable for labor. The stockholders of any corporation formed for the purposes mentioned in this chapter shall be jointly and severally liable in their individual capacities for all debts due to mechanics, workmen and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied; provided, such action is commenced within four months; and provided always, that if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally or any number of

them and recover in such action the ratable amount due from the person or persons so sued.

§ 3158. Annual report. Contents. How verified. Every such corporation shall annually within twenty days from the first day of January make a report which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness and the amounts due the corporation, the number and amount of dividends and when paid and the net amount of profits. The said report must be signed by the president and a majority of the directors and be verified by the oath of the president or secretary of the corporation and filed in the office of the register of deeds of the county where the business of the corporation is carried on; any person who willfully neglects, fails or refuses to make, sign or publish the report as provided in this section shall be guilty of a misdemeanor. § 515, Civil C.

§ 3159. Demand for statement. Penalty for refusal. Whenever any person or persons owning twenty per cent of the capital stock of any corporation formed for the purposes mentioned in this chapter shall present a written request to the treasurer thereof that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail and deliver the same to the persons presenting the written request within twenty days after such presentation; and such treasurer shall also at the same time place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such corporation demanding an examination thereof; the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer neglects or refuses to comply with the provisions of this section he shall forfeit and pay to the person presenting such written request the sum of fifty dollars and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action. § 516, Civil C.

§ 3160. Office out of state. Main office in state. Any corporation formed for the purposes mentioned in this chapter may provide in the articles of incorporation for having a business office without this state at any place within the United States and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this state must have its main office for the transaction of business within this state to be also designated in such articles. § 517, Civil C.

§ 3161. Directors liable for violating law resulting in insolvency. If any such corporation shall willfully violate any of the provisions of this chapter relating or applying to such corporation and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable in an action founded upon this statute for all debts contracted after such violation. § 518, Civil C.

CHAPTER 16.

BRIDGE CORPORATIONS.

§ 528, Civil C.

§ 3162. Articles. Contents. Filing. The term of existence of a bridge corporation shall not exceed twenty years; and in addition to the matters required in section 2861 every corporation formed for the purpose of constructing a bridge over any stream of water must in the articles of incorporation specify as follows: The place where such bridge is to be built and over what stream; that the banks on both sides of the stream where such bridge is to be built are owned by such corporation, or that it has obtained in writing the consent of the owners of the banks, where the bridge is to be built, to build the bridge or that the banks at such place are included within and part of a public highway, and in such case that the consent in writing of the board of county commissioners of the county or counties for the erection of such bridge by such corporation has been obtained, and it must file a certified copy of its articles of incorporation in the office of the register of deeds of the county or counties in which its bridge or any part thereof is situated or to be located.

§ 529, Civil C.

§ 3163. No tolls without authority from county commissioners. No such corporation shall construct, or take tolls on, a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located.

§ 530, Civil C.

§ 3164. When franchise forfeited. Every such corporation also ceases to be a body corporate:

1. If within six months from the issue of its certificate by the secretary of state it has not obtained such authority from the board or boards of county commissioners as mentioned in the last section; and if within one year thereafter it has not commenced the construction of its bridge and actually expended thereon at least ten per cent of its capital stock.

2. If within three years from the issuing of its certificate of incorporation the bridge is not completed.

§ 531, Civil C.

§ 3165. Bridge must be in good condition. Every bridge corporation must at all times keep the bridge in good and safe condition for travel both night and day, unless it is rendered impassable by reason of floods or high water; and if it is destroyed by fire or other causes the corporation must rebuild within a period of one year from such destruction, or its corporate rights shall be forfeited and cease to exist.

§ 532, Civil C.

§ 3166. Toll rates posted. Penalty for excessive toll. Such corporation previous to receiving and as a condition precedent to the right to receive any toll upon the use of its bridge must set up and keep in a conspicuous place on the bridge a board on which must be written, painted or printed in a plain and legible manner the rates of toll which shall have been prescribed by the board of county commissioners; and if such corporation shall demand or receive any greater rate of toll than the rates so prescribed it shall be subject to a fine of ten dollars for each offense, to be recovered in an action by the party aggrieved or by any public officer making the complaint.

§ 533, Civil C.

§ 3167. No tolls when bridge in bad condition. Penalty. No such corporation shall demand or receive toll whenever said bridge is not in good and safe condition for use and any person hav-

ing paid toll on such bridge and finding the same in a bad or unsafe condition for loaded wagons or teams shall have the right to make complaint before any justice of the peace in the county or counties in which the bridge is located, who shall thereupon summon the said corporation through its toll gatherer, officers or directors to appear before him to answer the complaint within not over five days from the date thereof, and if upon the hearing it is found that the bridge is not in a good and safe condition for use, or is in a bad condition and unsafe for loaded wagons or teams, the justice of the peace must impose a fine not less than ten dollars nor more than fifty dollars upon such corporation and he must thereupon enter judgment and issue his order that no toll be collected upon said bridge until it is put in good repair and safe condition.

§ 3168. Passage prevented until toll paid. Unlawful interference. Each toll gatherer may prevent from passing through his gate all persons, animals or vehicles subject to toll until he shall have received, respectively, the tolls authorized to be collected, and if he willfully or unreasonably hinders or delays any such persons, animals or vehicles from passing, when the lawful toll has been paid or tendered, he shall forfeit and pay for each offense a sum not less than five dollars nor more than twenty-five dollars, to be recovered in an action by the party aggrieved. § 534, Civil C.

§ 3169. Penalty for unlawful passing. Every person who forcibly, willfully or fraudulently passes over such bridge without having paid or tendered the legal toll for himself and the property in his charge shall for each offense forfeit and pay to the corporation injured a sum not exceeding twenty-five dollars, to be recovered in an action in the name of such corporation. § 535, Civil C.

§ 3170. Annual report to county board. The president and secretary of every bridge corporation must annually within twenty days from the first day of January report under oath to the board of county commissioners of the county in which the articles of incorporation are filed, specifying as follows: The costs of constructing and providing all necessary appendages and appurtenances of their bridge; the amount of all moneys expended thereon since its construction for repairs and incidental expenses; the capital stock, how much paid in and how much actually expended thereof; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made; the indebtedness of the corporation, specifying for what it was incurred; the net amount of profits; and such other facts and particulars respecting the business of the corporation as the board of county commissioners may require. § 536, Civil C.

§ 3171. Publication of report. Penalty for failure. Such corporation must cause the report required in the preceding section to be published for four weeks in a newspaper published in the town or city nearest such bridge. A failure to make such report and to publish it as aforesaid subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure an additional penalty of fifty dollars, payable in each case to the county or counties from which the authority to construct and take tolls is derived at the suit of such county or counties. All such cases must be reported by the boards of county commissioners to the state's attorney, who must commence an action therefor. § 537, Civil C.

CHAPTER 17.

RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS.

ARTICLE 1.—GENERAL PROVISIONS.

§ 538, Civil C.
§ 2, c. 48, 1891.
am'd. **§ 3172. How formed.** A corporation for religious, educational, benevolent, charitable or scientific purposes may be formed in the manner provided in chapter eleven.

§ 541, Civil C. **§ 3173. Annual report.** The trustees or directors of all such corporations must annually make a full report of all their property, real and personal, including property held in trust by them, and of the condition thereof and of all their affairs to the members of the corporation for which they are acting.

§ 542, Civil C.
§ 1, c. 28, 1881.
am'd. **§ 3174. May acquire and sell property.** All such corporations shall have power to acquire property, both real and personal, by purchase, devise or bequest and to hold the same and may sell, exchange or mortgage any or all property held or owned by them in the manner determined by their by-laws or by a majority vote of their members at a meeting called for that purpose.

§ 543, Civil C.
am'd. **§ 3175. By-laws.** Such corporations may in their by-laws in addition to the provisions of section 2884 provide for:

1. The qualification of members, mode of election and terms of admission to membership.

2. The fees of admission and dues to be paid to their treasury by members.

3. The expulsion and suspension of members for misconduct or nonpayment of dues; also for restoration to membership.

4. Contracting, securing, paying and limiting the amount of their indebtedness.

5. Other regulations not repugnant to the law of the state and consonant with the objects of the corporation.

§ 544, Civil C. **§ 3176. Subsequent members have equal rights.** Members admitted after incorporation have all the rights and privileges and are subject to the same responsibilities as members of the association prior thereto.

§ 545, Civil C. **§ 3177. Membership rights personal.** No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

§ 1, c. 49, Pol. C. **§ 3178. Title vests in successors in trust.** All grants or deeds from private individuals, or acts of legislative bodies, transferring, conveying or granting real estate in this state to any bishop, dean, rector, vestryman, deacon, director, minister or any other officer or officers of any church or organized religious society in trust for the use and benefit of such society of which they are such officer or officers, which have been or may be made, done or executed shall vest in their successor or successors in office, or other officer which such society may at any time designate, all the legal or other title, to the same extent and in all respects the same, as trustee of such trust for the use and benefit of such society, which such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers had under such grant, deed or act; and all transfers or sales made by such

officer or officers so acquiring title by virtue of this section by succession in office shall have all the validity, force and effect that it would have had, had it been made by such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, while holding under and by virtue of such grant, deed or act of such legislative body.

ARTICLE 2.—PROVISIONS RELATING TO EDUCATIONAL CORPORATIONS.

§ 3179. **Donations for particular purposes.** All donations, § 549. Civil C.
devises or bequests made to an educational corporation for particular purposes, when accepted, shall be applied in conformity with the express condition of the donor or devisor.

§ 3180. **Powers of corporation.** Educational corporations § 550. Civil C.
have power to appoint a president or principal for the institution and such professors, tutors and other agents and officers as may be necessary and to displace any of them as the interests of the institutions may require; to fill vacancies, to prescribe and direct the course of studies and the discipline to be pursued and observed in the institution and the rates of tuition in the same; and the president and professors shall constitute the faculty of such institution; and they have power to enforce the rules and regulations enacted for the government and discipline of the students and to suspend and expel offenders as may be deemed expedient. am'd.

§ 3181. **Degrees conferred.** Every such corporation having § 551. Civil C.
the rank of a college or university has power to confer, on the recommendation of the faculty, all such degrees or honors as are usually conferred by colleges and universities in the United States and such others, having reference to the course of studies and the worth and accomplishment of the student, as may be deemed proper.

§ 3182. **Mechanics and agriculture.** Such corporation may § 552. Civil C.
connect with its institution, to be used as a part of its course of education, any mechanical shops or machinery or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical and agricultural purposes of such institution.

ARTICLE 3.—FRATERNAL CORPORATIONS.

§ 3183. **Who may form.** Lodges, chapters, posts, encampments, councils, commanderies and other similar organizations, grand or subordinate, of the fraternities or associations commonly known as the Free and Accepted Masons, Independent Order of Odd Fellows, Grand Army of the Republic, Knights of Pythias, Ancient Order of United Workmen and other similar benevolent or charitable fraternities or associations may become corporations upon compliance with the provisions of this article. § 1. c. 72. 1890.

§ 3184. **Contents of articles.** Any such lodge, chapter, post, § 2. c. 72. 1890.
encampment, council, commandery or other similar organization, desiring to avail itself of the provisions of this article, shall cause to be prepared articles of incorporation, which must set forth:

1. The corporate name by which said corporation shall be known.
2. The place where it shall be located.
3. The time during which it shall exist.

4. The number of its directors or trustees and the names and residences of the members who shall serve as directors or trustees until the election and qualification of their successors in office.

5. Whether it shall be subject to any grand, supreme or sovereign lodge or other superior body or bodies.

6. The amount of property, not exceeding fifty thousand dollars, which it may hold and the disposition to be made of the same in case of its dissolution.

7. Whether the private property of its members shall be liable for its corporate debts.

§ 3, c. 72, 1890.

§ 3185. Articles to be acknowledged. The articles of incorporation must be subscribed and acknowledged by the trustees or directors therein named, who shall append thereto an affidavit duly subscribed and sworn to by each of them, setting forth that at a regularly called meeting of the lodge or body which it is proposed to incorporate, the date of which meeting shall be stated in such affidavit, it was voted by a majority of the members present at such meeting to incorporate such lodge or other body and that the affiants are the duly elected directors or trustees of such lodge or other body.

§ 4, c. 72, 1890.

§ 3186. Member's liability. The private property of the members of corporations formed under this article shall not be liable for its corporate debts, unless it is so provided in the articles of incorporation.

§ 5, c. 72, 1890.

§ 3187. Term of existence. The duration of corporations organized under this article may be perpetual if it is so stated in the articles of incorporation.

§ 6, c. 72, 1890.

§ 3188. By-laws. All corporations formed under this article shall have the power to enact by-laws not inconsistent with the laws of the United States or of the state of North Dakota and to amend and repeal the same in such manner as the members thereof shall determine. Every corporation formed under this article shall within three months after the filing of its articles of incorporation in the office of the secretary of state adopt by-laws and file a copy thereof within one month after the adoption thereof in the office of the secretary of state. The copy so filed shall be certified to by the directors or trustees of the corporation as being a true copy of the by-laws of such corporation. A copy of any by-law thereafter adopted, similarly certified to, shall be filed in the office of the secretary of state within one month after its adoption and in case of the repeal or amendment of any by-law the directors or trustees shall within one month after such amendment or repeal file with the secretary of state a certificate setting forth the fact of such amendment or repeal.

§ 7, c. 72, 1890.

§ 3189. Corporations governed by by-laws. All corporations formed under this article shall elect their directors or trustees and their officers and call and hold their meetings at the time and in the manner prescribed by their by-laws. The officers, other than directors or trustees, shall be such as the by-laws shall prescribe and shall perform such duties as may be designated by the by-laws.

§ 8, c. 72, 1890.

§ 1, c. 49, 1891.

§ 3190. Articles, what may contain. Dissolution. It may be provided in the articles of incorporation of any corporation formed under this article that such corporation and the members thereof shall be subject to the jurisdiction of some grand, supreme or sovereign lodge or other body or bodies of the association or fraternity to which the lodge or other organization forming such corporation may belong and that in case such supreme, grand or sovereign lodge, or

other superior body or bodies shall at any time revoke or suspend the charter granted by it to such subordinate lodge or other organization, or whenever by the laws and usages of the organization of which such subordinate body forms a part, the said subordinate body shall become defunct, then the corporate powers of such lodge or other subordinate organization shall cease and determine, except that such corporation as such shall have power to sell, convey and dispose of its property and collect debts due it; and all such property and debts shall be delivered up to the grand, supreme or sovereign lodge or other body or bodies of the association or fraternity to which such subordinate body forming such corporation may belong, or owe allegiance in accordance with the law and usages of said fraternity or association.

ARTICLE 4.—CEMETERY CORPORATIONS.]

§ 3191. Real property limited. Uses. Every cemetery corporation has power to purchase or take by gift, grant, or devise, and to hold real property, not exceeding eighty acres for the sole use and purpose of a burial ground, and to lay out the same into blocks and lots with convenient avenues and walks and to sell the lots for the sole use and purpose of burying the dead; and it may hold all such personal property as the legitimate and necessary purposes of the corporation may require. § 553, CIVIL C.

§ 3192. Survey and plat. Record. Such corporation shall cause its land, or such portion thereof as may from time to time become necessary for that purpose to be surveyed into lots, avenues and walks and platted and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be regularly numbered by the surveyor and such number shall be marked on the plat and recorded. § 554, CIVIL C.

§ 3193. Powers. Such corporation has power to inclose, improve and embellish its grounds, avenues and walks and to erect buildings or vaults for its use, and to prescribe in its by-laws rules for the sale, inclosure and ornamentation of lots and for erecting monuments or gravestones thereon; and to prohibit any use, division, improvement or ornamentation of any lot which the corporation may deem improper; and to make other by-laws and acts to the end that all the appliances, conveniences and benefits of a public and private cemetery may be obtained and secured. § 555, CIVIL C.

§ 3194. How proceeds from sale applied. The proceeds arising from the sale of lots, after deducting all expenses of purchasing, inclosing, laying out and improving the ground and of erecting buildings shall be exclusively applied, appropriated and used in protecting, preserving, improving and embellishing the cemetery and its appurtenances and to paying the necessary expenses of the corporation and must not be appropriated to any purposes of profit to the corporation or its members. § 556, CIVIL C.

§ 3195. Debts paid from proceeds. At least fifty per cent of the gross proceeds of sales of blocks, lots or graves must be applied as often as every six months to the payment of the debts and obligations of the corporation. § 557, CIVIL C.

§ 3196. Previous lot owners members. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the

time of the purchase, continue to own the same and are members of the corporation, as hereinafter provided, with all the privileges the purchase of a corporation lot confers.

§ 559, Civil C.

§ 3197. Only lot owners entitled to vote. At each subsequent election of officers of any such corporation held after the first annual election the owner or owners of a lot in the cemetery, and none other, shall be entitled to one vote at such election or for any other purpose and no more than one vote; and shall by virtue of such proprietorship be a member of the corporation and eligible to any of its offices; but if there is more than one proprietor of any such lot then such one of the proprietors as the majority of them shall designate may cast the one vote as aforesaid; and each trustee or director shall be the sole proprietor of a lot in such cemetery.

§ 560, Civil C.

§ 3198. Interment makes lot inalienable. Whenever an interment is made in any lot transferred to individual owners by the corporation the same thereby, while any person is buried therein, becomes forever inalienable and descends in regular line of succession to the heirs at law of the owner; but any one or more of such heirs may release to any other of said heirs his or their interest in the same and any other joint owners may release to each other in like manner.

§ 561, Civil C.

§ 3199. Wholly exempt. All the property of every such benevolent corporation and the lots sold by it to individual proprietors shall be exempt from taxation, assessment, lien, attachment and from levy and sale upon execution; and all such real property shall be exempt from appropriation for streets, roads or any other public uses or purposes.

CHAPTER 18.

AGRICULTURAL FAIR CORPORATIONS.

§ 562, Civil C.

§ 3200. May hold real property. Limitation. Agricultural fair corporations may purchase, hold or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon and may sell, lease or otherwise dispose of the same at pleasure. This real estate must be held for the purpose of erecting buildings and making other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising and general domestic industry.

§ 564, Civil C.

§ 3201. Debts limited. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract except for the purchase of real property, for which it may create a debt not exceeding three thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

§ 565, Civil C.
1, c. 8, 1879.

§ 3202. Income and expenses. Agricultural fair corporations are not conducted for profit and have no capital stock or income other than that derived from charges to exhibitors and fees for membership and admissions, which charges, together with the term of membership and the mode of acquiring the same must be provided for in their

by-laws. Such charges and fees must never be greater than to raise sufficient money to discharge the debt for the real estate and the improvements thereon and to defray the current expenses of fairs; provided, that agricultural fair corporations may also be organized by three or more persons as in the case of other corporations, with all the rights, privileges and liabilities appertaining to such corporations under the corporation laws of this state, including such rights and privileges as are specified in this and the two preceding sections.

CHAPTER 19.

BUILDING AND LOAN ASSOCIATIONS.

§ 3203. How formed. Any ten or more persons may form a corporation for the purpose of doing business as a building and loan association in the manner provided in this chapter and, except as otherwise provided, the provisions of articles one to eleven inclusive of chapter 11 shall be applicable to such corporation. Such corporation may do business outside of this state if it shall have expressed its intention so to do in its articles of incorporation.

§ 1, c. 34, 1885.
§§ 1, 2, c. 40, 1889.
am'd.

§ 3204. When capital stock paid in. Lien on shares. Series. Withdrawals. The capital stock of any corporation formed pursuant to this chapter shall be paid in at such times, in such amounts and at such places as the by-laws shall appoint; every share of stock shall be subject to a lien for the payment of unpaid installments and other charges incurred thereon under the provisions of the by-laws and the by-laws may prescribe the form and manner of enforcing such lien; new shares of stock may be issued in lieu of the shares withdrawn or forfeited. The stock may be issued in one or more successive series in such amounts as the board of directors or stockholders may determine and any stockholder wishing to withdraw from the corporation shall have power to do so by giving thirty days' notice of his intention to withdraw, when he shall be entitled to receive the amount paid in by him and such proportion of the profit as the by-laws may determine, less all fines and other charges; provided, that at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors; and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security. Upon the death of the stockholder his legal representatives shall be entitled to receive the full amount paid in by him and legal interest thereon after deducting all charges that may be due on stock. No fine shall be charged to a deceased member's account after his decease, unless the legal representatives of such decedent assume the future payments on the stock.

§ 2, c. 34, 1885.
1, c. 34, 1887.
11, c. 40, 1889.
am'd.

§ 3205. Loaning funds. The officers shall hold stated meetings at which the money in the treasury if equal to the amount of one share in stock in such corporation shall be offered for loan in open meeting and the stockholder who shall bid the highest premium for the preference or priority of loan shall be entitled to receive a loan of the amount of the par value of one share of stock for each share of stock held by him.

§ 4, c. 34, 1885.
§ 3, c. 34, 1887.
am'd.

§ 3206. Loans evidenced by note, secured by mortgage and pledge of shares. Conditions of mortgage. For every loan made a note secured by first mortgage of real estate shall be given, accompanied by a transfer and pledge of the shares of the borrower. The shares so pledged shall be held by the corporation as collateral security for the performance of the conditions of such note and mortgage. The note and mortgage shall recite the number of shares pledged and the amount of money advanced thereon and shall be conditioned for the payment of the dues on such shares and the interest and premium upon the loan, together with all fines and payments in arrears, until such shares reach the ultimate par value of the shares of stock of the corporation, or the loan is otherwise canceled and discharged; provided, that the shares without other security may in the discretion of the directors be pledged as security for loans to an amount not exceeding their value as adjusted at the last adjustment and valuation of shares before the time of the loan. If the borrower neglects to offer security satisfactory to the directors within the time prescribed by the by-laws his right to the loan shall be forfeited and he shall be charged with one month's interest and one month's premium at the rate bid by him, together with all expenses, if any, incurred; and the money appropriated for such loan may be reloaned at the next or any subsequent meeting.

5, c. 34, 1885.
4, c. 34, 1887.
am'd.

§ 3207. Loan may be repaid at any time. Option of borrower. A borrower may repay a loan at any time upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the original loan together with all installments of interest, premiums and fines in arrears, and shall be given credit for the withdrawing value of his shares pledged and transferred as security; and the balance shall be received by the corporation in full satisfaction and discharge of such loan; provided, that a borrower desiring to retain his shares and membership may, at his option, repay his loan without claiming credit for such shares, whereupon the shares shall be retransferred to him, and shall be free from any claim by reason of such canceled loan. If, however, the by-laws of the corporation prescribe a different manner and different terms upon which a loan may be repaid the repayment can only be made in accordance with such by-laws.

§ 6, c. 34, 1885.
am'd.

§ 3208. No premium deemed usurious. No premiums, fines or interest on premiums that may accrue to the corporation according to the provisions of this chapter shall be deemed usurious.

8, c. 34, 1885.
5, c. 34, 1887.
am'd.

§ 3209. May purchase real estate, when. Every corporation may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment lien, or other incumbrance or ground rent or in which it may have any interest and may sell, convey, lease or mortgage at pleasure real estate so purchased.

§ 4, c. 40, 1889.

§ 3210. Minimum premium. Such corporation may in its by-laws fix a per cent premium at less than which it will not be obliged to accept loans.

§ 5, c. 40, 1889.
am'd.

§ 3211. Loan fund. Uses prohibited. Not less than eighty-three per cent of all monthly dues collected from the share holders of such corporation shall be put into a fund to be known as the loan fund, no part of which shall be used by the corporation for the purpose of paying its expenses, or the expense of carrying on its business, excepting interest, taxes and insurance.

§ 3212. **Investment of unloaned funds.** Any funds of such corporation, which shall remain unloaned for a period of more than thirty days and for which there is no sufficient demand, may be loaned or invested by the corporation under the provisions of its by-laws at any rate of interest allowed by law upon any security approved and accepted by the board of directors. § 7, c. 40, 1889. am'd.

§ 3213. **Power to borrow.** Such corporation shall have power to borrow money under such restrictions and regulations as its by-laws may provide. § 5, c. 40, 1889. am'd.

§ 3214. **Retirement of unpledged shares.** The board of directors of such corporation shall have power in its discretion to retire the unpledged shares of stock of such corporation at any time after the third year from the date of the issue of such stock and to enforce the withdrawal of the same in such manner and under such regulations as it may deem best for the interest of the corporation. It shall determine by lot or in any other impartial manner which shares shall be thus retired, but no unmatured stock shall be retired while any matured stock remains in force. § 9, c. 40, 1889. am'd.

§ 3215. **Voluntary withdrawals.** The by-laws of such corporation may provide for the voluntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on; provided, that such withdrawal and cancellation shall be pro rata among the shares of the same series of stock. § 18, c. 34, 1885. am'd.

§ 3216. **Annual report. Contents.** All building and loan associations doing business in this state shall annually make a true and correct statement, verified by the oath of its president or secretary, setting forth its actual financial condition on the thirtieth day of June of the current year, which shall be forwarded to the state examiner not later than the first day of August of the same year and shall contain the following information:

1. The amount of authorized capital and the par value of each share of stock.
2. The number of shares sold during the year.
3. The number of shares canceled and withdrawn during the year.
4. The number of shares in force at the end of the year.
5. A detailed statement of the receipts and disbursements during the year.
6. A detailed statement of the assets and liabilities at the end of the year.

Such report shall also show the total amount received as dues on stock under each separate class or kind of stock and all deductions therefrom for expenses, withdrawals, cancellations, forfeitures, refunded or otherwise, and the amounts, if any, of profits credited to stock or subject to such credit, the number of shares in force of each issue or series and the amount expended during the year in payment of salaries of officers, clerks, agents and all other employees, the amount expended for traveling expenses, rent, postage, including telegraph and express charges, printing, books and stationery, office supplies, office furniture, advertising, commissions paid agents or other persons and all other items of expense.

In addition such annual report shall contain a statement of the business of the corporation for the preceding year, showing the amount of resources included in mortgage loans, the amount of loans on stock of the association, the amount of loans on other securities

specifying the kind of such securities, the amount of unpaid dues, fines, premiums and interest, the amount due from agents, the amount due from banks, the amount invested in real estate and obtained on foreclosure, the amount invested in furniture and fixtures, the amount of cash on hand and the amount of all other resources of the association not enumerated heretofore; and shall state as its liabilities the amount received from stock subscriptions, the amount due from stock delinquent in each class or kind of stock and the unpaid fines on such stock, the amount set aside as an expense fund from each kind or class of stock, the amount of undivided profits at the beginning of the year, the amount received as interest, premiums, fees, fines or other sources as profits during the year, the amount of such interest and interest delinquent at the end of the year, the amount of all bills payable and the amount of all other liabilities at the close of the year. Within thirty days from the filing of the report a statement of the assets and liabilities shall be published at least once in some newspaper in the city or town in which the association has its principal place of business. All statements herein required to be made shall be uniform and in accordance with a form to be prescribed by the state examiner, and shall correctly show the proportion which the entire expenses of the association for the term reported bear to its gross earnings for that term. All reports required of building and loan associations organized under the laws of this state are also required of all foreign building and loan associations doing business in this state, and all the provisions of this chapter relating to such reports, the filing thereof and the fees therefor shall apply to such foreign building and loan associations.

§ 3217. Penalty for not making report. Certificate of authority. If any such association shall fail to furnish to the state examiner the report required by this chapter at the time required, it shall forfeit the sum of twenty-five dollars for every day such report shall be delayed or withheld and the attorney general on the application of the state examiner shall bring an action to recover such penalty. After receiving such annual report the state examiner, if satisfied that such corporation has complied with all the provisions of this chapter and is entitled to do business in this state, shall issue his certificate, stating the compliance with such provisions, and that such corporation is entitled to do business in this state, which certificate shall be in force for the period of one year, unless sooner rescinded as provided in this chapter. The state examiner shall also issue such certificate to a domestic corporation, which commenced business at some intervening period in any year which has complied with the law in regard to its articles of incorporation and in all other respects except the filing of such report.

§ 3218. Examination by state examiner. Fee. It shall be the duty of the state examiner as often as he may deem necessary and at least once in each year to examine every building and loan association incorporated under the laws of this state, and for that purpose he shall have and exercise over such corporation, its business, officers, directors and employees all the power and authority conferred upon him by the laws of this state over banks and other moneyed corporations; provided, that he shall not have the power to suspend the operation of any such corporation, except in the manner provided in this chapter. The state examiner shall have the same supervision and control over the business within this state of foreign cor-

porations of like kind, doing business in this state. Upon the completion of any examination of any association made by the state examiner, or under his direction, the association so examined shall pay to the examiner a fee to be determined as follows, viz: For the first one hundred thousand dollars of assets, a fee of ten dollars and for each additional one hundred thousand dollars of assets, or major portion thereof, an additional fee of five dollars.

§ 3219. Action against insolvent corporation. If it shall appear to the state examiner from any examination made by him, or from the annual report aforesaid, that any such corporation organized under the laws of this state is violating the law, or that it is conducting business in an unsafe, unauthorized or dishonest manner, he shall, by an order under his hand and seal of office addressed to such corporation direct compliance with the requirements of the law. And whenever such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply with such order as aforesaid, the state examiner shall file a statement in writing with the attorney general, setting forth the facts or particulars in which such alleged violation or refusal consists, which statement shall be prima facie evidence of such violation or refusal, whereupon the attorney general shall institute such proceedings against such corporation as are provided by law in the case of insolvent corporations, or such other proceedings as the occasion may require.

§ 3220. Conditions on which foreign corporations can do business in this state. No foreign building and loan association or corporation shall do business in this state, until:

1. It shall have first complied with the provisions of sections 3261 and 3263.

2. It shall have obtained from the state examiner a certificate, authorizing it to do business in this state.

Upon application by any foreign building and loan corporation or association to do business in this state, and thereafter whenever the state examiner shall deem it prudent for the public interest he shall examine into its financial condition and method of doing business and for that purpose, if he deems it necessary he may visit such corporation, or cause the same to be visited by a competent person appointed by him, and he may demand from such corporation or association in advance, his fees and necessary expenses for making such examination and may refuse to make the same or to issue any certificate unless such fees and expenses are paid, and if a certificate has already been issued may rescind the same. For the purpose of making such examination the person making the same shall have free access to all the books and papers of the corporation that relate to its business and to the books and papers kept by any of its agents and may summon as witnesses and examine under oath the directors, officers, agents and trustees of any such corporation and any other person in relation to its affairs, transactions and condition.

§ 3221. Certificate to foreign corporation. If he is satisfied from such examination that such corporation is solvent and its method of doing business is such as is likely to be beneficial to all of its members alike, he shall issue a certificate, authorizing it to do business in this state, if one is not already in force, which certificate shall be in force for one year, or until the time required for the filing of the annual report, unless sooner rescinded.

§ 3222. Revocation of authority. If the state examiner is of opinion upon examination or other evidence that a foreign building and loan association doing business in this state is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination, or to perform any legal obligation in relation thereto, he shall revoke or suspend its certificate of authority and shall cause notification thereof to be published three times, once in each week, for three successive weeks, in some newspaper published at the seat of government and shall mail a copy to such association or corporation at its home office and no new business shall thereafter be done by it, or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the examiner.

§ 3223. Selling stock of foreign corporation without authority, a misdemeanor. Any officer, director or agent of any foreign building and loan association, or any person whatever, who shall in this state solicit subscriptions to the stock of such association, or who shall sell or issue, or knowingly cause to be sold or issued to a resident of this state any stock of such association, while such association shall not hold the certificate of the state examiner, authorizing it to do business in this state as herein described, or before such association has complied with all the provisions of this chapter or when such association shall have been notified that its authority to do business in this state has been revoked, as hereinbefore provided, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment, in the discretion of the court.

§ 3224. Same. Domestic corporation. Any officer, director or agent of any building and loan association incorporated under the laws of this state, or any other person whatever, who shall sell or issue, or knowingly cause to be sold or issued to any person any stock of such association, while such association shall not have a certificate of the state examiner authorizing it to do business as herein prescribed shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars, or by imprisonment of not less than ten days nor more than six months, or by both such fine and imprisonment in the discretion of the court.

§ 3225. Reincorporation unnecessary. All corporations heretofore organized in this state and doing business as building and loan associations shall comply with and be subject to all the provisions of this chapter and shall be entitled to all the privileges and benefits thereof without reincorporating.

CHAPTER 20.

BANKING CORPORATIONS.

§ 3226. **Who may form.** Associations for carrying on the business of banking under this chapter may be formed by any number of natural persons, not less than three, two-thirds of whom shall be residents of the state. They shall enter into articles of association which shall specify in general terms the objects for which the association is formed, and may contain any other provision, not inconsistent with law which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association and a copy of them shall be forwarded to the secretary of state of the state of North Dakota.

§ 1, c. 23, 1890.
§ 1, c. 27, 1893

§ 3227. **Organization certificate. Contents.** The persons uniting to form such an organization shall under their hands make an organization certificate which shall specifically state:

§ 2, c. 23, 1890.
§ 2, c. 27, 1893.
am'd.

1. The name assumed by such association, which name shall not be that of any other bank in the state.

2. The place where the business of discount and deposit is to be carried on.

3. The amount of the capital stock and the number of shares into which the same is to be divided.

4. The names and places of residence of the shareholders and the number of shares held by each of them.

5. The period at which such banks shall commence and terminate business.

§ 3228. **Acknowledgment and record.** The organization certificate shall be acknowledged before a clerk of some court of record or a notary public and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, recorded in the office of the register of deeds in the county where such bank may be established and such certificate thus authenticated shall be transmitted to the secretary of state, who shall record and carefully preserve the same in his office.

§ 3, c. 23, 1890.
§ 3, c. 27, 1893.

§ 3229. **Powers.** Upon duly making and filing articles of association and an organization certificate the association shall become as from the date of the execution of the same a body corporate and as such, and in the name designated in the certificate it shall have power:

§ 4, c. 23, 1890.
§ 4, c. 27, 1893.
am'd.

1. To adopt and use a corporate seal.

2. To have succession for a period of twenty-five years from its organization, unless it is sooner dissolved according to the provisions of this chapter, or unless its franchise becomes forfeited by some violation of law.

✓ 3. To make contracts.

4. To sue and be sued.

5. To elect or appoint directors, two-thirds of whom shall be residents of this state, and by its board of directors to appoint a president and vice president, who shall be members of said board, a cashier and assistant cashier and such other help as may be required, define their duties, require bonds of them and fix the penalty thereof,

dismiss such officers or any of them and appoint others to fill their places.

6. To prescribe by its board of directors by-laws not inconsistent with the law, regulate the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its business conducted and the privileges granted it by law exercised and enjoyed.

7. To exercise by its board of directors or duly authorized officers or agents, subject to law all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, bills of exchange, drafts and other evidence of debt, by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money on personal security; but no association shall transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the secretary of state to commence the business of banking and the secretary of state may withhold from any association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than legitimate objects as contemplated by this chapter.

§ 5, c. 23, 1890.
§ 5, c. 27, 1893.

§ 3230. Powers as to real estate. Banking associations formed under this chapter shall have power to purchase, hold and convey real estate for the following purposes and no other:

1. Such as may be necessary for its immediate accommodation in the transaction of its business, not exceeding in value thirty per cent of its capital.

2. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

3. Such as shall be conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.

4. Such as it shall purchase at sales under judgments, decrees or mortgages held by the association or shall purchase to secure debts due to it, but no such association shall hold the possession of any real estate under mortgage or the title and possession of any real estate purchased to secure any debts due to it for a longer period than five years.

§ 6, c. 23, 1890.
§ 6, c. 27, 1893.
§ 1, c. 106, 1895.

§ 3231. Capital proportionate to inhabitants. Hereafter no association shall be organized under this chapter in towns containing five hundred inhabitants or less with a capital less than five thousand dollars; in towns of over five hundred and not exceeding one thousand inhabitants, with a capital less than ten thousand dollars; in towns of over one thousand and not exceeding one thousand five hundred inhabitants, with a capital less than fifteen thousand dollars; in towns of over one thousand five hundred and not exceeding two thousand inhabitants, with a capital less than twenty thousand dollars; in towns over two thousand and not exceeding two thousand five hundred inhabitants, with a capital less than thirty thousand dollars; in towns of over two thousand five hundred and not exceeding three thousand inhabitants, with a capital less than forty thousand dollars; and in towns of over three thousand inhabitants, with a capital less than fifty thousand dollars. At least fifty per cent of the capital stock of every association shall be paid in before it shall be authorized to commence business; the balance of which shall be paid in by installments of not less than ten per cent at the end of each succeeding month from the time it is authorized to commence business.

The payment of each installment shall be certified to the secretary of state, under the oath of the president or the cashier of the association. For the purpose of this section the population of a town, village or city shall be determined by multiplying by four the total vote cast for member of congress at the last general election held in such town, village or city and the result shall be taken as the population of such town, village or city.

§ 3232. Certificate and authorization published. The association shall cause the organization certificate and the official authorization of the secretary of state, issued under this chapter, to be published in some newspaper in the city or county where the association is located for at least four consecutive weeks next after the issuing thereof. § 7, c. 23, 1890.
§ 7, c. 27, 1893.

§ 3233. Articles as evidence. A certified copy of the articles of incorporation may be used in evidence in all courts for or against such banks or any person for or against whom such evidence is necessary, whether on civil or criminal trial. § 8, c. 23, 1890.
§ 8, c. 27, 1893.

§ 3234. Delinquent stock, how sold. Whenever any shareholder or his assignee fails to pay any installment on the stock, when the same is required to be paid the directors of such association may sell the stock of the delinquent shareholder or as much thereof as is necessary to satisfy the debt at public auction, after having given three weeks' previous notice thereof in a newspaper published and in general circulation in the city or county where the association is located, to any person who will pay the highest price therefor to be not less than the amount due thereon, with the expenses of the advertisement and sale and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association and the cost of the advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order within six months from the time of such forfeiture. § 9, c. 23, 1890.
§ 9, c. 27, 1893.

§ 3235. Shares. Value. Liability of shareholder. The capital stock of each association shall be divided into shares of one hundred dollars each and be deemed personal property and transferable on the books of the association in such manner as may be prescribed by the by-laws or articles of such association; every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of prior holders of such shares and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired. § 10, c. 23, 1890.
§ 10, c. 27, 1893.

§ 3236. Capital stock, how increased or reduced. Any association formed under this chapter may, by its articles of association, provide for an increase of its capital stock from time to time as may be deemed expedient, subject to the rules and limitations of this chapter, but no increase of capital shall be valid until the whole amount shall be paid in in cash and such payments, certified under oath by the president or cashier of such association to the secretary of state, who will give his certificate that the provisions of this section have been complied with, and specifying therein the amount of such increase of capital stock with his approval thereof and that it has been duly paid in as part of the capital thereof. Any association formed under this chapter may, by vote of its shareholders owning two-thirds of its stock, reduce its capital to any sum not below the amount § 11, c. 23, 1890.
§ 11, c. 27, 1893.

required by this chapter to authorize the formation of the association, but no such reduction shall be made until the amount of the proposed reduction is reported to the secretary of state and his approval thereof obtained in writing, and no such reduction shall be construed as affecting the liability of shareholders for any debts of the association incurred prior to such reduction.

§ 12, c. 23, 1890.
§ 12, c. 27, 1893.

§ 3237. How dissolved. Duties of state examiner. Any association organized under the provisions of this chapter may be dissolved by the district court of the county where its office or principal place of business is situated upon its voluntary application for that purpose. The application must be in writing and must set forth that at a meeting of the stockholders or members called for that purpose, the dissolution of the association was resolved upon by a two-thirds vote of all the stockholders or members and that all claims and demands against the association have been satisfied and discharged. The application must be signed by a majority of the board of directors or other officers having the management of the affairs of the association, and must be verified in the same manner as a complaint in a civil action. A verified copy of the application shall be filed with the state examiner or such state officer as is by law authorized to examine such associations within ten days after the filing of such application with the district court. If the court is satisfied that the application is in conformity with this chapter it must order the application to be filed, and that the clerk give not less than thirty nor more than fifty days' notice of the application by publication in some newspaper published in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county. At any time before the expiration of the time of publication any person may file his objections to the application. Before the final hearing and determination of the application the state examiner shall make a thorough examination of the affairs of such association and file a certified statement of such examination with the clerk of the court of the county where such application is made, which statement shall be part of the papers in the case. After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true the court must declare the association dissolved. No stockholder or officer of such association shall be allowed to withdraw from such association, or surrender or dispose of his shares of stock after the filing or making of such application for dissolution and prior to the final determination of the case. Upon the dissolution of such association by the district court, the clerk of said court shall forthwith notify the secretary of state of such dissolution by sending a copy of the order of the court and said order and notice shall be filed by the secretary of state with the original certificate of organization. The application, notices and proof of publication, objections, if any, and declaration of dissolution constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 13, c. 23, 1890.
§ 13, c. 27, 1893.

§ 3238. Dividends. Surplus fund. The directors of any association organized under this chapter may semiannually declare a dividend of so much of the net profits of the association as they shall judge expedient, but each association shall before the declaration of a dividend carry one-tenth part of its net profits of the preceding half

year to its surplus fund until the same shall amount to twenty per cent of its capital stock.

§ 3239. **Qualification of director.** Every director must own in his own right at least ten shares of the capital stock of the association of which he is a director; any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified shall thereby vacate his place. Every such director, when elected or appointed shall take an oath, that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or willingly permit to be violated any of the provisions of this chapter and that he is the bona fide owner of the number of shares of stock required by this chapter to become a director, standing in his name on the books of the association. Such oath subscribed by the director making it and certified by the officer before whom it is taken shall at once be transmitted to the state examiner to be filed in his office.

14. c. 23, 1890.
14. c. 27, 1893.

§ 3240. **No dividends, when. Bad debts.** No association or any member thereof shall, during the time it shall continue its banking operations, withdraw or permit to be withdrawn, either in form of dividends or otherwise any portion of its capital. If losses have at any time been sustained by such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall be made by any association while it continues its banking business to an amount greater than its net profits on hand, deducting therefrom its losses and bad debts; all debts due to an association on which the interest is past due and unpaid for a period of six months unless the same are well secured and in process of collection shall be considered bad debts within the meaning of this section; but nothing in this section shall prevent the reduction of the capital of the association under section 3236.

15. c. 23, 1890.
15. c. 27, 1893.

§ 3241. **Rate of interest.** Such association may demand and receive for loans on personal security, or for notes, bills or other evidences of debt, discounted, such rate of interest as may be agreed upon, not exceeding the amount authorized by law to be contracted for, and it shall be lawful to receive the interest according to the ordinary usage of banking institutions.

16. c. 23, 1890.
16. c. 27, 1893.

§ 3242. **Regular and special reports. Penalty for failure to make.** Every association shall make at least four reports each year to the state examiner, according to the form which may be prescribed by him, verified by the oath of the president or cashier and attested by at least two of the directors; such report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day by him specified and shall be transmitted to the state examiner within seven days after the receipt of such request from him and in the same form shall be published in a newspaper in the city or county where such association is located at the expense of the association. The state examiner shall also have power to call for special reports from any association, whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of its condition; every association which fails to make and transmit any report required under this section shall be subject to a penalty of two hundred dollars for each offense.

17. c. 23, 1890.
17. c. 27, 1893.

§ 3243. **Responsibility of shareholders.** The shareholders of every association organized under this chapter shall be individually

18. c. 23, 1890.
18. c. 27, 1893.

responsible equally and ratably and not one for the other for all contracts, debts and engagements of such association made or entered into to the extent of the amount of his stock therein at the par value thereof, in addition to the amount invested in and due on such shares.

19, c. 23, 1890.
19, c. 27, 1893. **§ 3244. Loans on shares prohibited.** No association shall make any loans or discounts on the security of the shares of its own stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith and stock so purchased or acquired shall within six months be sold or disposed of at public or private sale.

20, c. 23, 1890.
20, c. 27, 1893. **§ 3245. Reserve fund.** Each association shall at all times have on hand in available funds an amount equal to twenty per cent of its deposits, one-half of which may consist of balances due to the association from good solvent banks and one-half shall consist of cash on hand; whenever the available funds shall be below twenty per cent of its deposits such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange, payable at sight, nor make any dividends of its profits, until the required proportion between the aggregate amount of deposits and its lawful money reserve has been restored; and the state examiner may notify any association whose lawful money reserve shall be below the amount above required to be kept on hand to make good such reserve and if such association shall fail so to do for a period of thirty days after such notice, the state examiner may impose a penalty of not less than one hundred dollars or more than five hundred dollars, which shall be collected in the same manner as other penalties prescribed in this chapter.

21, c. 23, 1890.
21, c. 27, 1893. **§ 3246. Penalties, how recovered.** All fines and penalties heretofore provided for, to which any association organized under this chapter may become subject, shall be recovered on complaint of the state examiner, before any court having competent jurisdiction and all fines and penalties so recovered shall be paid into the state treasury.

22, c. 23, 1890.
22, c. 27, 1893. **§ 3247. Limit of loan to one concern.** The total liability to any association of any person or company, corporation or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof shall not at any time exceed fifteen per cent of the capital stock of such association actually paid in, but the discount of bills of exchange drawn in good faith against actual existing values or loans upon produce in transit or in store as collateral security and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed.

23, c. 23, 1890.
23, c. 27, 1893. **§ 3248. Penalty for violations.** Any person or persons violating the provisions of this chapter, not hereinbefore specially provided for, shall upon conviction thereof pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense, to be recovered before any court having competent jurisdiction and all fines and penalties so recovered shall be paid into the state treasury.

24, c. 23, 1890.
24, c. 27, 1893. **§ 3249. Penalty for false statements or entries.** Every officer, agent or clerk of any association under this chapter, who willfully and knowingly subscribes or makes any false statements or entries in the books of such association, or knowingly subscribes or exhibits any false paper with the intent to deceive any person

authorized to examine as to the condition of such association, or willfully subscribes or makes false reports shall be subject to imprisonment at hard labor in the penitentiary for such term, not less than one year nor more than ten years, as the court trying him may designate.

§ 3250. **Insolvent bank not to receive deposits.** No banking association shall accept or receive on deposit with or without interest any money, bank bills or notes, or United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, when such banking association is insolvent.

§ 25, c. 23, 1890.
§ 25, c. 27, 1893.

§ 3251. **Penalty for violating last section.** If any such banking association shall receive or accept on deposit any such deposits as aforesaid when insolvent any officer, director, cashier, manager, member, party or managing party thereof, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby of any such deposits as aforesaid, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding ten thousand dollars or by imprisonment in the penitentiary not exceeding five years, or by both fine and imprisonment as aforesaid.

§ 26, c. 23, 1890.
§ 26, c. 27, 1893.

§ 3252. **Banking must be done in compliance with this chapter. Penalty.** No individual, firm or corporation shall transact a banking business without complying with and organizing under the provisions of this chapter. Any person violating the provisions of this section either individually or as an interested party in any association or corporation is guilty of a misdemeanor and on conviction thereof shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than ninety days or both in the discretion of the court.

§ 27, c. 23, 1890.
§ 27, c. 27, 1893,
am'd.

§ 3253. **Forfeiture of franchise.** Every association organized under this chapter which shall refuse or neglect to comply with any requirement lawfully made upon it by the state examiner, pursuant to this chapter, for the period of ninety days after demand in writing is made shall be deemed to have forfeited its franchise and any failure on the part of such association to comply with or any violation of any of the provisions of this chapter shall work a forfeiture of its franchise and in either case the attorney general upon demand of the state examiner shall commence an action for the purpose of annulling the existence of said corporation.

§ 28, c. 23, 1890.
§ 28, c. 27, 1893.

§ 3254. **Examination of banks. Fees. Report to governor.** The state examiner of North Dakota shall be ex officio superintendent of banks; he shall as often as shall be deemed necessary and proper and at least once a year duly examine every bank organized under this law, for which he shall charge the bank so examined a fee for the yearly examination only and turn the same into the state treasury as follows: Banks, ten thousand dollars capital or less, a fee of ten dollars; banks of from ten thousand dollars to twenty thousand dollars capital, fifteen dollars; banks of from twenty thousand dollars to forty thousand dollars capital, twenty dollars; and banks with a capital of over forty thousand dollars, twenty-five dollars. He shall have power to make a thorough examination into the affairs of the association and in so doing may examine any of the officers, agents or clerks thereof, on oath and shall make a full and detailed report in writing of the condition of the association so examined to the governor of the state, a copy of which report shall be filed in the office

§ 29, c. 23, 1890.
§ 29, c. 27, 1893.

of the secretary of state, which shall be open to all persons doing business with such association. The state examiner shall not be directly or indirectly interested in any association organized under this chapter.

§ 30, c. 27, 1893.

§ 3255. Oaths of officers. Every active officer of any bank organized under this chapter shall before entering upon the duties of his office take and subscribe an oath that he will so far as the duty devolves on him diligently and honestly administer the affairs of such association and that he will not knowingly violate or willingly permit to be violated any of the provisions of this chapter. All such oaths shall be presented to the board of directors and a synopsis thereof recorded on the director's record and then filed with the papers of the bank.

§ 31, c. 27, 1893.

§ 3256. Bonds of officers and employees. The president and vice president, if active officers of the bank, the cashier, assistant cashier and teller shall before entering upon their duties furnish a good and sufficient bond to the association; the minimum amount shall not be less than twenty per cent of the capital stock of the association and may be greater if required by the board of directors. Other employees shall give bonds whenever required by the board of directors; all such bonds to be approved by the board and filed with one of its members, a record of which shall be made on the minutes of the meeting of said board.

§ 32, c. 27, 1893.

§ 3257. Examination by directors. Report. It shall be the duty of the board of directors in February and in August of each year to proceed and make a careful and thorough examination of all the assets of the bank, examine stock, check certificates of deposits and cashier's checks, count cash, examine loans and discounts of every nature with the securities and collaterals belonging thereto; compare the aggregate with the records and examine the records and make a complete report of such examination with suggestions and criticisms, if in its judgment such are necessary, which report shall be spread on the records of the bank the same as of a regular meeting of the board of directors and shall be examined by the state examiner when making his regular annual examination of the bank.

§ 33, c. 27, 1893.
am'd.

§ 3258. Action against insolvent banks. The state examiner on becoming satisfied of the insolvency of any bank, organized under the provisions of this chapter, after making an examination of the same shall forthwith submit a statement of its condition to the attorney general, who shall thereupon institute an action against the corporation in accordance with the provisions of chapter twenty-six of the code of civil procedure.

CHAPTER 21.

EXISTING CORPORATIONS ELECTING TO CONTINUE
UNDER THIS CHAPTER.

§ 3259. Proceedings when existing corporations elect to continue. § 566, Civil C. Any corporation existing at the passage of this act, formed under the laws of this state, may elect to continue its existence under the provisions of the ten preceding chapters applicable thereto and it may at any time thereafter make such choice or election at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is so made, signed by the chairman and secretary of the meeting and a majority of the directors and trustees must be filed in the office of the secretary of state and thereafter the corporation shall continue its existence under the provisions of the ten preceding chapters which are applicable thereto and shall possess all the rights and powers and be subject to all the obligations, restrictions and limitations prescribed thereby.

§ 3260. When individuals must comply with law on corporations. § 4, c. 10, 1879. am'd. Any person or association of persons now engaged in or that may hereafter engage in the construction of any railroad, street railway, telegraph or telephone lines, ditch for conveying water, or other like work of internal improvement shall be required to comply strictly with all the provisions of the preceding ten chapters in the same manner as corporations, so far as the same can be done. A failure of any such person or association of persons to comply as aforesaid shall work a forfeiture of any and all rights he or they may have acquired in accordance with law.

CHAPTER 22.

DUTIES OF FOREIGN CORPORATIONS.

§ 3261. Conditions of foreign corporation doing business in this state. § 567, Civil C. am'd. No foreign corporation, association or joint stock company, except an insurance company, shall transact any business within this state, or acquire, hold or dispose of property, real or personal, within this state, until such corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter or articles of incorporation and shall have complied with the provisions of this chapter; provided, that the provisions of this chapter shall not apply to corporations created for religious or charitable purposes solely.

§ 368, Civil C.

§ 3262. Record. Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of this state for that purpose.

§ 560, Civil C.
1, c. 38, 1885.
am'd.

§ 3263. Appoint secretary of state attorney for service. Such corporation, association or joint stock company shall by a duly executed instrument filed in the office of the secretary of state constitute and appoint the secretary of state and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served upon it personally in this state and that such appointment shall continue in force irrevocable so long as any liability of the corporation, association or joint stock company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the corporation, association or joint stock company. Whenever process against any foreign corporation, association or joint stock company, doing business in this state, shall be served upon the secretary of state he shall forthwith mail a copy of such process, postage prepaid, and directed to such corporation, association or joint stock company at its principal place of business, or if it is a corporation, association or joint stock company of a foreign country, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the secretary of state. As a condition of valid and effectual service the plaintiff shall pay to the secretary of state at the time of the service the sum of two dollars which the plaintiff shall recover as taxable costs if he prevails in his action. The secretary of state shall keep a record of all such process which shall show the time and hour of service.

§ 1, c. 183, 1890.
am'd.

§ 3264. Liability of officers, etc., for failure to comply. Any failure to comply with the provisions of the last three sections and with section 3116 of this code shall render each and every officer, agent and stockholder of any corporation, association or joint stock company failing to comply therewith, jointly and severally liable on any and all contracts of such corporation, association or joint stock company made within this state during the time such corporation, association or joint stock company is so in default.

§ 3265. Failure to comply renders all contracts void. Every contract made by or on behalf of any corporation, association or joint stock company, doing business in this state, without first having complied with the provisions of section 3116, if an insurance company, or with the provisions of sections 3261 and 3263, if other than an insurance company, shall be wholly void on behalf of such corporation, association or joint stock company and its assigns, but any contract so made in violation of the provisions of this section may be enforced against such corporation, association or joint stock company.

CHAPTER 23.

NATURE OF PROPERTY.

§ 3266. **Ownership defined.** The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code the thing of which there may be ownership is called property. § 159, Civil C.

§ 3267. **What may be owned.** There may be ownership of all inanimate things which are capable of appropriation or of manual delivery, of all domestic animals, including dogs, of all obligations, of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs and of rights created or granted by statute. § 160, Civil C.
§ 1, c. 101, 1891.

§ 3268. **Wild animals.** Animals, wild by nature, are the subjects of ownership while living only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued. § 161, Civil C.

§ 3269. **Property classified.** Property is either: § 162, Civil C.

1. Real or immovable; or,
2. Personal or movable.

§ 3270. **Real defined.** Real or immovable property consists of: § 163, Civil C.

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

§ 3271. **Land defined.** Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance. § 164, Civil C.

§ 3272. **Fixtures.** A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws. § 165, Civil C.

§ 3273. **Appurtenances.** A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit, as in the case of a way or water course, or of a passage for light, air or heat from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine. § 166, Civil C.

§ 3274. **Personal property defined.** Every kind of property that is not real is personal. § 167, Civil C.

CHAPTER 24.

OWNERSHIP.

ARTICLE 1. — OWNERS.

- § 168, Civil C. **§ 3275. Ownership. Limitation.** The legislative assembly can pass no law interfering with the primary disposal of the soil. All property in this state has an owner, whether that owner is the United States or the state, and the property public; or the owner an individual, and the property private. The state may also hold property as a private proprietor.
- § 169, Civil C. **§ 3276. Land below high water mark.** The ownership of land below ordinary high water mark and of land below the water of a navigable lake or stream is regulated by the laws of the United States or by such laws as under authority thereof, the legislative assembly may enact. The state is the owner of all property lawfully appropriated or dedicated to its own use; and of all property of which there is no other owner.
- § 170, Civil C. **§ 3277. Who may convey.** Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this state.

ARTICLE 2. — INTERESTS IN PROPERTY.

- § 171, Civil C. **§ 3278. Ownership classified.** The ownership of property is either:
1. Absolute; or,
 2. Qualified.
- § 172, Civil C. **§ 3279. Absolute ownership.** The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.
- § 173, Civil C. **§ 3280. Qualified ownership.** The ownership of property is qualified:
1. When it is shared with one or more persons.
 2. When the time of enjoyment is deferred or limited; or,
 3. When the use is restricted.
- § 174, Civil C. **§ 3281. Sole ownership.** The ownership of property by a single person is designated as a sole or several ownership.
- § 175, Civil C. **§ 3282. Ownership by several.** The ownership of property by several persons is either:
1. Of joint interests.
 2. Of partnership interests; or,
 3. Of interests in common.
- § 176, Civil C. **§ 3283. Joint tenancy.** A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.
- § 177, Civil C. **§ 3284. Partnership.** A partnership interest is one owned by several persons in partnership for partnership purposes.
- § 178, Civil C. **§ 3285. Common tenancy.** An interest in common is one owned by several persons not in joint ownership or partnership.

§ 3286. **Definition.** Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint interest as provided in section 3283. § 179, Civil C.

§ 3287. **Commencement and duration.** In respect to the time of enjoyment an interest in property is either: § 180, Civil C.

1. Present or future; and,
2. Perpetual or limited.

§ 3288. **Present.** A present interest entitles the owner to the immediate possession of the property. § 181, Civil C.

§ 3289. **Future.** A future interest entitles the owner to the possession of the property only at a future period. § 182, Civil C.

§ 3290. **Perpetual.** A perpetual interest has a duration equal to that of the property. § 183, Civil C.

§ 3291. **Limited.** A limited interest has a duration less than that of the property. § 184, Civil C.

§ 3292. **Future estates classified.** A future interest is either:
1. Vested; or,
2. Contingent. § 185, Civil C.

§ 3293. **When they vest.** A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest. § 186, Civil C.

§ 3294. **How contingent.** A future interest is contingent while the person in whom or the event upon which it is limited to take effect, remains uncertain. § 187, Civil C.

§ 3295. **Alternative contingencies.** Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly. § 188, Civil C.

§ 3296. **Not void.** A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect. § 189, Civil C.

§ 3297. **Posthumous heir.** When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent. § 190, Civil C.

§ 3298. **Future estates pass.** Future interests pass by succession, will and transfer in the same manner as present interests. § 191, Civil C.

§ 3299. **Possibilities.** A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind. § 192, Civil C.

§ 3300. **Estates of realty.** In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in chapter 26 of this code. § 193, Civil C.

§ 3301. **Applies to personal only.** The names and classifications of interests in real property have only such application to interests in personal property as in this chapter and the succeeding seventeen chapters of this code is expressly provided. § 194, Civil C.

§ 3302. **Future interests limited.** No future interest in property is recognized by the law, except such as is defined in this code. § 195, Civil C.

ARTICLE 3.—CONDITIONS OF OWNERSHIP.

- § 196, Civil C. **§ 3303. Conditions defined.** The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.
- § 197, Civil C. **§ 3304. Classified.** Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right.
- § 198, Civil C. **§ 3305. Illegal conditions void.** If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful the instrument takes effect and the condition is void.
- § 199, Civil C. **§ 3306. Restraints upon marriage.** Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed are void; but this does not affect limitations when the intent was not to forbid marriage, but only to give the use until marriage.
- § 200, Civil C. **§ 3307. Restraints on alienation.** Conditions restraining alienation, when repugnant to the interest created, are void.

ARTICLE 4.—RESTRAINTS UPON ALIENATION.

- § 201, Civil C. **§ 3308. Power of alienation. How long may be suspended.** The absolute power of alienation cannot be suspended by any limitation or condition whatever for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 3336.
- § 202, Civil C. **§ 3309. When future interest void.** Every future interest is void in its creation, which by any possibility may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.
- § 203, Civil C. **§ 3310. Leases limited.** No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid. No lease or grant of any town or city lot for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

ARTICLE 5.—ACCUMULATIONS.

- § 204, Civil C. **§ 3311. Income. Future interest.** Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this chapter in relation to future interests.
- § 205, Civil C. **§ 3312. Illegal accumulation.** All directions for the accumulation of the income of property, except such as are allowed by this chapter are void.
- § 206, Civil C. **§ 3313. Income, how directed.** An accumulation of the income of property for the benefit of one or more persons may be

directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this chapter permitted for the vesting of future interests and during the minority of the beneficiaries, and terminate at the expiration of such minority.

§ 3314. Void beyond minority. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority. § 207, Civil C.

§ 3315. Allowance to minor from accumulations. When a minor, for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the county court upon application may direct a suitable sum to be applied thereto out of the fund. § 208, Civil C.

ARTICLE 6.—RIGHTS OF OWNERS.

§ 3316. Owner owns products and accessions. The owner of a thing owns also all its products and accessions. § 209, Civil C.

§ 3317. To whom undirected income belongs. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest. § 210, Civil C.

ARTICLE 7.—TERMINATION OF OWNERSHIP.

§ 3318. When future interest dependent on death is defeated. A future interest, depending on the contingency of the death of any person without successors, heirs, issue or children is defeated by the birth of a posthumous child of such person capable of taking by succession. § 211, Civil C.

§ 3319. How future interest defeated. A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest thus liable to be defeated to be on that ground adjudged void in its creation. § 212, Civil C.

§ 3320. When not defeated. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise, except as provided by the next section or when a forfeiture is imposed by statute as a penalty for the violation thereof. § 213, Civil C.

§ 3321. Same. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited § 214, Civil C.

to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

CHAPTER 25.

GENERAL DEFINITIONS.

- § 215, Civil C. **§ 3322. Income includes what.** The income of property, as the term is used in the two preceding chapters, includes the rents and profits of real property, the interest of money, dividends upon stock and other produce of personal property.
- § 216, Civil C. **§ 3323. When limitation deemed created.** The delivery of the grant, when a limitation, condition or future interest is created by grant, and the death of the testator, when it is created by will, is to be deemed the time of the creation of the limitation, condition or interest within the meaning of this code.

CHAPTER 26.

REAL OR IMMOVABLE PROPERTY.

ARTICLE 1.—GENERAL PROVISIONS.

- § 217, Civil C. **§ 3324. Law governing real property.** Real property within this state is governed by the law of this state, except when the title is in the United States.

ARTICLE 2.—ESTATES IN GENERAL.

- § 218, Civil C. **§ 3325. Estates classified as to duration.** Estates in real property, in respect to the duration of their enjoyment are either:
1. Estates of inheritance, or perpetual estates.
 2. Estates for life.
 3. Estates for years; or,
 4. Estates at will.
- § 219, Civil C. **§ 3326. Estate in fee defined.** Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee.
- § 220, Civil C. **§ 3327. Estates tail declared fees.** Estates tail are abolished; and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.
- § 221, Civil C. **§ 3328. Fee tail valid as contingent limitation upon a fee.** When a remainder in fee is limited upon any estate which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of his death.

§ 3329. **Estate of freehold.** Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution. § 222, Civil C.

§ 3330. **Same.** An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold. § 223, Civil C.

§ 3331. **Future, how limited.** A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination by lapse of time or otherwise of a precedent estate created at the same time. § 224, Civil C.

§ 3332. **Reversion defined.** A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised. § 225, Civil C.

§ 3333. **Remainder.** When a future estate, other than a reversion, is dependent on a precedent estate it may be called a remainder and may be created and transferred by that name. § 226, Civil C.

§ 3334. **Limitation of suspension of absolute ownership.** The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. § 227, Civil C.

§ 3335. **Further defined.** The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust is a suspension of the power of alienation within the meaning of section 3308. § 228, Civil C.

§ 3336. **Creation of a remainder on prior remainder.** A contingent remainder in fee may be created on a prior remainder in fee to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years or upon any other contingency by which the estate of such persons may be determined before they attain majority. § 229, Civil C.

§ 3337. **Creation of future freehold estates, etc.** Subject to the rules of this chapter and of chapters 23, 24 and 25 a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this chapter. § 230, Civil C.

§ 3338. **What life estates void.** Successive estates for life cannot be limited except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created. § 231, Civil C.

§ 3339. **Remainder upon successive life estates.** No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years unless it is for the whole residue of such term. § 232, Civil C.

§ 3340. **Contingent remainder on term of years.** A contingent remainder cannot be created on a term of years, unless the § 233, Civil C.

nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

§ 3341. **Estate for life as remainder on term of years.** No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

§ 3342. **Conditional limitation.** A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

§ 3343. **To heirs of body.** When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given the persons who on the termination of the life estate are the successors or heirs of the body of the owner for life are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life.

§ 3344. **On death of first taker.** When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate it is to be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years.

§ 3345. **Unexecuted power.** A general or special power of appointment does not prevent the vesting of a future estate, limited to take effect in case such power is not executed.

ARTICLE 3.—TERMINATION OF ESTATES.

§ 3346. **Of estate at will.** A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant in the manner prescribed by the next section to remove from the premises within a period specified in the notice of not less than one month.

§ 3347. **Requisites of notice.—Service.** The notice prescribed by the last section must be in writing and must be served by delivering the same to the tenant or to some person of discretion residing on the premises or, if neither can with reasonable diligence be found, the notice may be served by affixing it on a conspicuous part of the premises where it may be conveniently read.

§ 3348. **Subsequent action.** After the notice prescribed by sections 3346 and 3347 has been served in the manner therein directed and the period specified by such notice has expired, but not before, the landlord may re-enter or proceed according to law to recover possession.

§ 3349. **Three days' notice.** Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued upon three days' previous written notice of intention to re-enter served in the mode prescribed by section 3347.

§ 3350. **Without notice.** An action for the possession of real property, leased or granted with a right of re-entry, may be maintained at any time after the right to re-enter has accrued without the notice prescribed in section 3349.

ARTICLE 4. — SERVITUDES.

§ 3351. **Easements attached to other lands.** The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances, and are then called easements: § 244, Civil C.

1. The right of pasturage.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.
8. The right of receiving air, light or heat from or over, or discharging the same upon or over land.
9. The right of receiving water from or discharging the same upon land.
10. The right of flooding land.
11. The right of having water flow without diminution or disturbance of any kind.
12. The right of using a wall as a party wall.
13. The right of receiving more than natural support from adjacent land or things affixed thereto.
14. The right of having the whole of a division fence maintained by a coterminous owner.
15. The right of having public conveyances stopped, or of stopping the same on land.
16. The right of a seat in church.
17. The right of burial.

§ 3352. **Others not attached may be granted.** The following land burdens or servitudes upon land may be granted and held, though not attached to land: § 245, Civil C.

1. The right to pasture, and of fishing and taking game.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals or other things.

§ 3353. **Dominant tenement.** The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement. § 246, Civil C.

§ 3354. **Who can create servitude.** A servitude can be created only by one who has a vested estate in the servient tenement. § 247, Civil C.

§ 3355. **Who cannot hold.** A servitude thereon cannot be held by the owner of the servient tenement. § 248, Civil C.

§ 3356. **Extent of.** The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired. § 249, Civil C.

§ 3357. **Partition of. Burden apportioned.** In case of partition of the dominant tenement the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement. § 250, Civil C.

§ 3358. **Right of future owner.** The owner of a future estate in a dominant tenement may use easements attached thereto for the § 251, Civil C.

purpose of viewing waste, demanding rent or removing an obstruction to the enjoyment of such easement, although such tenement is occupied by a tenant.

§ 252, Civil C.

§ 3359. **Right of action.** The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

§ 253, Civil C.

§ 3360. **Same.** The owner in fee of a servient tenement may maintain an action for the possession of the land against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

§ 254, Civil C.

§ 3361. **Extinguishment.** A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person.

2. By the destruction of the servient tenement.

3. By the performance of any act upon either tenement by the owner of the servitude or with his assent which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

CHAPTER 27.

RIGHTS OF OWNERS.

ARTICLE 1. — INCIDENTS OF OWNERSHIP.

§ 255, Civil C.

§ 3362. **Land includes water.** The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream formed by nature over or under the surface may be used by him as long as it remains there; but he may not prevent the natural flow of the stream or of the natural spring from which it commences its definite course, nor pursue nor pollute the same.

§ 256, Civil C.

§ 3363. **Rights of owner of life estate.** The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

§ 257, Civil C.

§ 3364. **Rights of tenant.** A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy and cultivate and harvest the crops growing at the end of his tenancy.

§ 258, Civil C.

§ 3365. **Same. How determined.** A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired or by the last section.

§ 259, Civil C.

§ 3366. **Succession to rights.** A person to whom any real property is transferred or devised upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent for nonperformance of any of the terms of the lease or for any waste or cause of forfeiture as his grantor or devisor might have had.

§ 3367. **Assignees of lessor or lessee.** Whatever remedies the lessor of any real property has against his immediate lessee for the breach of an agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises. Whatever remedies the lessee of any real property may have against his immediate lessor for the breach of any agreement in the lease he may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises. § 260, Civil C.

§ 3368. **Notice to change terms.** In all leases of lands or tenements, or of any interest therein, from month to month the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. § 261, Civil C.

§ 3369. **Life lease rent.** Rent due upon a lease for life may be recovered in the same manner as upon a lease for years. § 262, Civil C.

§ 3370. **After death.** Rent dependent on the life of a person may be recovered after as well as before his death. § 263, Civil C.

§ 3371. **Right of action.** A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although after its commission his estate is transferred and he has no interest in the property at the commencement of the action. § 264, Civil C.

ARTICLE 2. — BOUNDARIES.

§ 3372. **Above and below surface.** The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it. § 265, Civil C.

§ 3373. **Banks and beds of streams.** Except when the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on a navigable lake or stream, takes to the edge of the lake or stream at low water mark, and all navigable rivers shall remain and be deemed public highways. In all cases when the opposite banks of any stream not navigable belong to different persons the stream and the bed thereof shall become common to both. § 266, Civil C.

§ 3374. **To center of highway.** An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown. § 267, Civil C.

§ 3375. **Lateral support from adjoining land.** Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction on using ordinary care and skill and taking reasonable precautions to sustain the land of the

other and giving previous reasonable notice to the other of his intention to make such excavations.

§ 269, Civil C. **§ 3376. Trees on land of one owner.** Trees whose trunks stand wholly upon the land of one owner belong exclusively to him although their roots grow into the land of another.

§ 270, Civil C. **§ 3377. Same on line.** Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

ARTICLE 3.—OBLIGATIONS OF OWNERS.

§ 271, Civil C. **§ 3378. Repairs and taxes.** The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance.

§ 272, Civil C. **§ 3379. Boundaries. Fences.** Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.
2. The fences between them, unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value at that time of any division fence made by the latter.

CHAPTER 28.

USES AND TRUSTS.

§ 273, Civil C. **§ 3380. What are.** Uses and trusts in relation to real property are those only which are specified in this chapter.

§ 275, Civil C. **§ 3381. Who deemed to have legal estate.** Every person who by virtue of any transfer or devise is entitled to the actual possession of real property and the receipt of the rents and profits thereof is deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest.

§ 276, Civil C. **§ 3382. Trust valid, if connected with power.** The last section does not divest the estate of any trustee in a trust heretofore existing, when the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

§ 277, Civil C. **§ 3383. Transfer must be direct.** Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person to the use of or in trust for another no estate or interest vests in the trustee: but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

§ 278, Civil C. **§ 3384. Qualification of preceding sections.** The preceding sections of this chapter do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

§ 3385. Requisites of trusts. No trust in relation to real property is valid unless created or declared: § 279, Civil C.

1. By a written instrument, subscribed by the trustee or by his agent thereto authorized by writing.

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

§ 3386. When trust presumed. When a transfer of real property is made to one person and the consideration therefor is paid by or for another a trust is presumed to result in favor of the person by or for whom such payment is made. § 280, Civil C.

§ 3387. Innocent purchaser. No implied or resulting trust can prejudice the right of a purchaser or incumbrancer of real property for value and without notice of the trust. § 281, Civil C.

§ 3388. For what trusts may be created. Express trusts may be created for any of the following purposes: § 282, Civil C.

1. To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person or for any shorter term, subject to the rules of chapter 26 of this code; or,

4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by the same chapter.

§ 3389. When devise valid as power in trust. A devise of real property to executors or other trustees to be sold or mortgaged, when the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust. § 283, Civil C.

§ 3390. When surplus subject to creditors' claims. When a trust is created to receive the rents and profits of real property and no valid direction for accumulation is given the surplus of such rents and profits beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created is liable to the claims of the creditors of such person in the same manner as personal property which cannot be reached by execution. § 284, Civil C.

§ 3391. When trust valid as power. When an express trust in relation to real property is created for any purpose not enumerated in the preceding section, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers contained in chapter 29 of this code. § 285, Civil C.

§ 3392. Power in trust not prohibited. Nothing in this chapter prevents the creation of a power in trust for any of the purposes for which an express trust may be created. § 286, Civil C.

§ 3393. Realty passes when trust valid as power. In every case when a trust is valid as a power in trust the real property to which the trust relates remains in or passes by succession to the person otherwise entitled, subject to the execution of the trust as a power in trust. § 287, Civil C.

- § 288, Civil C. **§ 3394. Whole estate vests in trustees.** Except as herein after otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.
- § 289, Civil C. **§ 3395. Contingent trust.** Notwithstanding anything contained in the last section, the author of a trust may in its creation prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.
- § 290, Civil C. **§ 3396. Legal estate.** The grantee or devisee of real property subject to a trust acquires a legal estate in the property as against all persons except the trustees and those lawfully claiming under them.
- § 291, Civil C. **§ 3397. Undisposed estates.** When an express trust is created in relation to real property every estate not embraced in the trust and not otherwise disposed of is left in the author of the trust or his successors.
- § 292, Civil C. **§ 3398. Limited disposal.** The beneficiary of a trust for the receipt of the rents and profits of real property or for the payment of an annuity out of such rents and profits may be restrained from disposing of his interest in such trust during his life or for a term of years by the instrument creating the trust.
- § 293, Civil C. **§ 3399. Grant separate from trust. When absolute.** When an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee or in an instrument signed by him and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of the subsequent creditors of the trustee not having notice of the trust and in favor of purchasers from such trustee without notice and for a valuable consideration.
- § 294, Civil C. **§ 3400. When transfer of trustees void.** When a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees in contravention of the trust is absolutely void.
- § 295, Civil C. **§ 3401. When trust ceases.** When the purpose for which an express trust was created ceases, the estate of the trustees also ceases.

CHAPTER 29.

POWERS.

- § 296, Civil C. **§ 3402. What powers permitted.** Powers in relation to real property are those only which are specified in this chapter.
- § 297, Civil C. **§ 3403. Power of attorney excluded.** The provisions of this chapter do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit.
- § 298, Civil C. **§ 3404. Power defined.** A power as the term is used in this chapter is an authority to do some act in relation to real property, or

to the creation or revocation of an estate therein or a charge thereon which the owner granting or reserving such power might himself perform for any purpose.

§ 3405. **Author defined.** The author of a power as the term § 299, Civil C. is used in this chapter is the person by whom a power is created, whether by grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation.

§ 3406. **Powers classified.** Powers are general or special and § 300, Civil C. beneficial or in trust.

§ 3407. **General.** A power is general when it authorizes the § 301, Civil C. alienation or incumbrance of a fee in the property embraced therein by a grant, will or charge, or any of them, in favor of any person whatever.

§ 3408. **Special.** A power is special: § 302, Civil C.

1. When a person or class of persons is designated to whom the disposition of property under the power is to be made; or,

2. When it authorizes the alienation or incumbrance by means of a grant, will or charge of only an estate less than a fee.

§ 3409. **Beneficial.** A power is beneficial when no person § 303, Civil C. other than its holder has by the terms of its creation any interest in its execution.

§ 3410. **In trust.** A power is in trust when any person or class § 304, Civil C. of persons, other than its holder, has by the terms of its creation an interest in its execution.

§ 3411. **General power. When in trust.** A general power § 305, Civil C. is in trust when any person or class of persons, other than its holder, is designated as entitled to the proceeds or the disposition or charge authorized by the power or to any portion of the proceeds or other benefits to result from its execution.

§ 3412. **Special. Same.** A special power is in trust: § 306, Civil C.

1. When the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power; or,

2. When any person or class of persons other than the holder is designated as entitled to any benefit from the disposition or charge authorized by the power.

§ 3413. **Capacity to create.** No person is capable of creating § 307, Civil C. a power who is not at the same time capable of granting some estate in the property to which the power relates.

§ 3414. **In whom vested.** A power may be vested in any § 308, Civil C. person.

§ 3415. **How created.** A power may be created only: § 309, Civil C.

1. By a suitable clause contained in a grant of some estate in the real property to which the power relates or in an agreement to execute such a grant; or,

2. By a devise contained in a will.

§ 3416. **Power reserved.** The grantor in any conveyance § 310, Civil C. may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved is subject to the provisions of this chapter in the same manner as if granted to another.

§ 3417. **When irrevocable.** Every power, beneficial or in § 311, Civil C. trust, is irrevocable unless an authority to revoke it is given or reserved in the instrument creating the power.

- § 312, Civil C. **§ 3418. When power is a lien.** A power is a lien upon the real property which it embraces from the time the instrument in which it is contained takes effect, except that against creditors, purchasers and incumbrancers in good faith and without notice from any person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded.
- § 313, Civil C. **§ 3419. When power deemed part of security.** When a power to sell real property is given to a mortgagee or other incumbrancer in an instrument intended to secure the payment of money, the power is to be deemed a part of the security and vests in any person who by assignment becomes entitled to the money so secured to be paid and may be executed by him whenever the assignment is duly acknowledged and recorded.
- § 314, Civil C. **§ 3420. Who cannot execute power.** A power cannot be executed by any person not capable of disposing of real property.
- § 315, Civil C. **§ 3421. Married woman.** A married woman may execute a power during her marriage without the concurrence of her husband, unless otherwise prescribed by the terms of the power.
- § 316, Civil C.
am'd. **§ 3422. Married woman cannot execute before majority.** No power can be executed by a married woman before she attains her majority.
- § 317, Civil C. **§ 3423. How power executed.** A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.
- § 318, Civil C. **§ 3424. Execution. By all of several. By survivors, if one dies.** When a power is vested in several persons all must unite in its execution; but in case any one or more of them is dead the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.
- § 319, Civil C. **§ 3425. How executed by will.** When a power to dispose of real property is confined to a disposition by devise or will the instrument of execution must be a will duly executed according to the provisions of chapter 40.
- § 320, Civil C. **§ 3426. How by grant.** When a power is confined to a disposition by grant, it cannot be executed by will even though the disposition is not intended to take effect until after the death of the person executing the power.
- 321, Civil C. **§ 3427. When directed by insufficient instrument.** When the author of a power has directed or authorized it to be executed by an instrument which would not be sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the rules before prescribed in this chapter.
- § 322, Civil C. **§ 3428. Formalities unnecessary.** When the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power.
- § 323, Civil C. **§ 3429. Trivial conditions disregarded.** When the conditions annexed to a power are merely nominal and evince no intention of actual benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power.

§ 3430. **Binding conditions.** With the exceptions contained § 324, Civil C.
in the preceding sections the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of a district court to supply a defective execution in the cases provided in sections 3439 and 3463.

§ 3431. **Consent, how expressed.** When the consent of a § 325, Civil C.
third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed or be certified in writing thereon. In the first case the instrument of execution, in the second, the certificate must be subscribed by the party whose consent is required and to entitle the instrument to be recorded such signature must be duly proved or acknowledged according to the chapter on recording transfers.

§ 3432. **Consent of all survivors.** When the consent of § 326, Civil C.
several persons to the execution of a power is requisite all must consent thereto; but in case any one or more of them is dead the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power.

§ 3433. **Valid without recital.** Every instrument executed § 327, Civil C.
by the holder of a power, conveying an estate or creating a charge which such holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein.

§ 3434. **When to be deemed conveyance.** Every instru- § 328, Civil C.
ment except a will in execution of a power, even though the power is one of revocation only is to be deemed a conveyance within the meaning of the chapter on recording transfers.

§ 3435. **Disposition beyond authority.** A disposition or § 329, Civil C.
charge by virtue of a power more extensive than was authorized thereby is not therefore void; but every estate or interest so created so far as it is embraced by the terms of the power is valid.

§ 3436. **Time runs from creation of power.** The period § 330, Civil C.
during which the absolute right of alienation may be suspended by an instrument in execution of a power must be computed, not from the date of the instrument, but from the time of the creation of the power.

§ 3437. **Conditions at creation determine legality.** No § 331, Civil C.
estate or interest can be given or limited to any person by an instrument in execution of a power which could not have been given or limited at the time of the creation of the power.

§ 3438. **Married woman's power.** When a married woman, § 332, Civil C.
entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may by virtue of such power create any estate which she might create if unmarried.

§ 3439. **Relief of purchasers from defects.** Purchasers for § 333, Civil C.
a valuable consideration, claiming under a defective execution of a power, are entitled to the same relief as similar purchasers claiming under a defective conveyance from an actual owner.

§ 3440. **Fraud.** Instruments in execution of a power are § 334, Civil C.
affected by fraud in the same manner as like instruments executed by owners or trustees.

§ 3441. **Power to married woman.** A general and beneficial § 335, Civil C.
power is valid which gives to a married woman power to dispose, during her marriage and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee.

- § 336, Civil C. **§ 3442. Estates changed into fee.** When an absolute power of disposition not accompanied by any trust is given to the owner of a particular estate for life or years, such estate is changed into a fee, absolute in favor of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed or the property should not be sold for the satisfaction of debts.
- § 337, Civil C. **§ 3443. Same.** When an absolute power of disposition not accompanied by any trust, is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers and incumbrancers.
- § 338, Civil C. **§ 3444. Same.** In all cases when an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee.
- § 339, Civil C. **§ 3445. Same.** When a general and beneficial power to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition within the meaning of the last three sections.
- § 340, Civil C. **§ 3446. When power deemed absolute.** Every power of disposition is deemed absolute by means of which the holder is enabled in his lifetime to dispose of the entire fee in possession or in expectancy for his own benefit.
- § 341, Civil C. **§ 3447. Grantor deemed owner. When power of revocation reserved.** When the grantor in any conveyance reserves to himself for his own benefit an absolute power of revocation, such grantor is still to be deemed the absolute owner of the estate conveyed so far as the rights of creditors and purchasers are concerned.
- § 342, Civil C. **§ 3448. When special and beneficial power valid.** A special and beneficial power is valid which is granted:
1. To a married woman to dispose, during the marriage, of any estate less than a fee belonging to her in the property to which the power relates; or,
 2. To the owner of a life estate in the property embraced in the power to make leases, commencing in possession during his life.
- § 343, Civil C. **§ 3449. How far power to lease void.** A special and beneficial power to make leases of agricultural land for more than ten years or of town or city lots for more than twenty years is void only as to the time beyond ten or twenty years, and authorizes leases for those terms or less.
- § 344, Civil C. **§ 3450. When power to lease transferable.** The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant it is extinguished.
- 345, Civil C. **§ 3451. Power to lease released.** The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property and is thereupon extinguished.
- § 346, Civil C. **§ 3452. Mortgage does not extinguish power.** A mortgage executed by the owner of a life estate having a power to make leases or by a married woman by virtue of any beneficial power does not extinguish or suspend the power, but the power is bound by the mortgage in the same manner as the real property embraced therein.
- 347, Civil C. **§ 3453. Effects of same.** The effects on the power of a lien by mortgage, such as is mentioned in the last section, are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his lien may require it; and,

2. That any subsequent estate created by the owner in execution of the power becomes subject to the mortgage in the same manner as if in terms embraced therein.

§ 3454. **When power subject to creditors' claims.** Every special and beneficial power is liable to the claims of creditors in the same manner as other interests that cannot be reached by execution and the execution of the power may be adjudged for the benefit of the creditors entitled. § 348, Civil C.

§ 3455. **Other powers void.** No beneficial power, general or special, not already specified and defined in this chapter can hereafter be created. § 349, Civil C.

§ 3456. **Powers enforceable for parties interested.** Every trust power unless its execution is made expressly to depend on the will of the trustees is imperative and imposes a duty on the trustee, the performance of which may be compelled for the benefit of the parties interested. § 350, Civil C.

§ 3457. **Same.** A trust power does not cease to be imperative when the trustee has the right to select any and exclude others of the persons designated as the beneficiaries of the trust. § 351, Civil C.

§ 3458. **Equal shares.** When a disposition under a power is directed to be made to, among or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled to equal proportions. § 352, Civil C.

§ 3459. **Discretionary power.** When the terms of a power import that the estate or fund is to be distributed among several persons designated in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others. § 353, Civil C.

§ 3460. **Death of trustee.** If the trustee of a power with the right of selection dies, leaving the power unexecuted, its execution must be adjudged for the benefit equally of all the persons designated as objects of the trust. § 354, Civil C.

§ 3461. **Execution by district court.** When a power in trust is created by will and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed its execution devolves on the district court. § 355, Civil C.

§ 3462. **Execution for benefit of creditors.** The execution in whole or in part of any trust power may be adjudged for the benefit of the creditors or assignees of any person entitled as one of the beneficiaries of the trust to compel its execution when his interest is transferable. § 356, Civil C.

§ 3463. **Defects cured.** When the execution of a power in trust is defective in whole or in part under the provisions of this chapter, its proper execution may be adjudged in favor of the persons designated as the objects of the trust. § 357, Civil C.

§ 3464. **Certain other laws apply.** The provisions of chapters 57 and 58, saving the rights of other persons from prejudice by the misconduct of trustees and authorizing the court to remove and appoint trustees; the provisions of chapter 41, devolving express trusts upon the court on the death of the trustee; and the provisions of section 3401 apply equally to powers in trust and the trustees of such powers. § 358, Civil C.

CHAPTER 30.

PERSONAL OR MOVABLE PROPERTY.

ARTICLE 1.—PERSONAL PROPERTY IN GENERAL.

- § 359, Civil C. **§ 3465. Governed by law of domicile.** If there is no law to the contrary in the place where personal property is situated it is deemed to follow the person of its owner and is governed by the law of his domicile.

ARTICLE 2.—THINGS IN ACTION.

- § 360, Civil C. **§ 3466. Defined.** A thing in action is a right to recover money or other personal property by a judicial proceeding.
- § 361, Civil C. **§ 3467. Transferable.** A thing in action, arising out of the violation of a right of property or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except when in the cases provided by law it passes to his devisees or successor in office.

ARTICLE 3.—SHIPPING.

GENERAL PROVISIONS.

- § 362, Civil C. **§ 3468. Ship defined.** The term "ship" or "shipping," when used in this code, includes steamboats, sailing vessels, canal boats, barges and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.
- § 363, Civil C. **§ 3469. Appurtenances.** All things belonging to the owners which are on board a ship and are connected with its proper use for the objects of the voyage and adventure in which the ship is engaged are deemed its appurtenances.
- § 364, Civil C. **§ 3470. Navigation classified.** Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation when passing to or from a foreign country, and in domestic navigation when passing from place to place within the United States.
- § 365, Civil C. **§ 3471. Domestic and foreign ships.** A ship in the port of the state or territory to which it belongs is called a domestic ship; in another port it is called a foreign ship.
- § 366, Civil C. **§ 3472. Power of court.** If a ship belongs to several persons, not partners, and they differ as to its use or repair the controversy may be determined by any court of competent jurisdiction.
- § 367, Civil C. **§ 3473. Possessor liable.** If the owner of a ship commits its possession and navigation to another, that other and not the owner is responsible for its repairs and supplies.
- § 368, Civil C. **§ 3474. Congress regulates.** The registry, enrollment and license of ships are regulated by acts of congress.

RULES OF NAVIGATION.

§ 3475. Meeting ships. Limitation. In the case of ships meeting the following rules must be observed in addition to those prescribed by any statutes of this state, which relate to navigation: § 369, Civil C.

1. Whenever any ship proceeding in one direction meets another ship proceeding in another direction so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other, except when the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger and subject also to a due regard to the dangers of navigation.

2. A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of that fair way or mid-channel which lies on the starboard side of the steamer. A steamer when passing another steamer in such channel must always leave the other upon the larboard side.

3. When steamers must inevitably or necessarily cross so near that by continuing their respective courses there would be a risk of collision each vessel must put her helm to port so as always to pass on the larboard side of each other.

The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam whistle, or by the regulations concerning lights upon steamers, or other matters prescribed under authority of any act of congress.

§ 3476. Infringement. Damages. If it appears that a collision was occasioned by failure to observe any rule of the foregoing section the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary. § 370, Civil C.

§ 3477. Damage presumed from default. Damage to person or property arising from the failure of a ship to observe any rule of section 3475 must be deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary. § 371, Civil C.

§ 3478. Liability defined. Losses caused by collision are to be borne as follows: § 372, Civil C.

1. If either party was exclusively in fault he must bear his own loss and compensate the other for any loss he has sustained.

2. If neither party was in fault the loss must be borne by him on whom it falls.

3. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or,

4. If it cannot be ascertained where the fault lies the loss must be equally divided.

CHAPTER 31.

PRODUCTS OF THE MIND.

- § 570, Civil C. **§ 3479. Ownership of.** The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation has an exclusive ownership therein and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession.
- § 571, Civil C. **§ 3480. Ownership of joint products.** Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:
1. If the product is single, in equal proportions; or,
 2. If it is not single, in proportion to the contribution of each.
- § 572, Civil C. **§ 3481. Transfer.** The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.
- § 573, Civil C. **§ 3482. Publication.** If the owner of a product of the mind intentionally makes it public a copy or reproduction may be made public by any person without responsibility to the owner so far as the law of this state is concerned.
- § 574, Civil C. **§ 3483. Subsequent production of same thing.** If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing, has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.
- § 575, Civil C. **§ 3484. Ownership of private communications.** Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER 32.

OTHER KINDS OF PERSONAL PROPERTY.

- § 576, Civil C. **§ 3485. Trade-marks.** One who produces or deals in a particular thing or conducts a particular business may appropriate to his exclusive use as a trade-mark any form, symbol or name which has not been so appropriated by another to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced or the business is carried on.
- § 577, Civil C. **§ 3486. Good will.** The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.
- § 578, Civil C. **§ 3487. Is property. Transferable.** The good will of a business is property, transferable like any other.

§ 3488. **Title deeds.** Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom for the time being such title may be vested and pass with the title. § 579, Civil C.

CHAPTER 33.

ACQUISITION OF PROPERTY.

ARTICLE 1.—MODES IN WHICH PROPERTY MAY BE ACQUIRED.

§ 3489. **How property acquired.** Property is acquired by: § 580, Civil C.

1. Occupancy.
2. Accession.
3. Transfer.
4. Will; or,
5. Succession.

ARTICLE 2.—OCCUPANCY.

§ 3490. **Title by occupancy.** Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will or succession. § 581, Civil C.

§ 3491. **Prescription.** Occupancy for the period prescribed by the code of civil procedure or any law of this state as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all. § 582, Civil C.

ARTICLE 3.—ACCESSION.

ACCESSION TO REAL PROPERTY.

§ 3492. **Fixtures, when tenant may remove.** When a person affixes his property to the land of another without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it; provided, that a tenant may remove from the demised premises any time during the continuance of his term anything affixed thereto for the purpose of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has by the manner in which it is affixed become an integral part of the premises. § 583, Civil C.

§ 3493. **Riparian accretions.** When from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank. § 584, Civil C.

§ 3494. **Land removed by stream reclaimed, when.** If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner § 585, Civil C.

of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

§ 586, Civil C.

§ 3495. **Islands in navigable streams.** Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary.

§ 587, Civil C.

§ 3496. **In other streams.** An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed, or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

§ 588, Civil C.

§ 3497. **Island formed by new channel.** If a stream, navigable or not navigable, in forming itself a new arm divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

§ 589, Civil C.

§ 3498. **When ancient bed taken as indemnity.** If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take by way of indemnity the ancient bed abandoned, each in proportion to the land of which he has been deprived.

ACCESSION TO PERSONAL PROPERTY.

§ 590, Civil C.

§ 3499. **Things inseparably united.** When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner or surrender the whole to him.

§ 591, Civil C.

§ 3500. **Principal part defined.** That part is to be deemed the principal part to which the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable and has been united without the knowledge of its owner, who may in the latter case require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

§ 592, Civil C.

§ 3501. **Further defined.** If neither part can be considered the principal within the rule prescribed by the last section, the more valuable, or if the values are nearly equal, the more considerable in bulk is to be deemed the principal part.

§ 593, Civil C.

§ 3502. **Thing made from another's materials.** If one makes a thing from materials belonging to another the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker on reimbursing the value of the materials.

§ 594, Civil C.

§ 3503. **Blended materials.** When one has made use of materials which in part belong to him and in part to another in order to form a thing of a new description without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

§ 3504. **Admixtures of materials.** When a thing has been formed by the admixture of several materials of different owners and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require separation if the materials can be separated without inconvenience. If they cannot be thus separated the owners acquire the thing in common in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials. § 593, CIVIL C.

§ 3505. **Foregoing sections not applicable to willful use.** The foregoing sections of this chapter are not applicable to cases in which one willfully uses the materials of another without his consent; but in such cases the product belongs to the owner of the material if its identity can be traced. § 596, CIVIL C.

§ 3506. **Material restored in kind or value paid.** In all cases when one whose material has been used without his knowledge in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind in the same quantity, weight, measure and quality, or the value thereof; or when he is entitled to the product, the value thereof in place of the product. § 597, CIVIL C.

§ 3507. **Damages.** One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter. § 598, CIVIL C.

CHAPTER 34.

TRANSFER.

ARTICLE 1.—DEFINITION OF TRANSFER.

§ 3508. **Transfer defined.** Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another. § 599, CIVIL C.

§ 3509. **Consideration unnecessary to validity.** A voluntary transfer is an executed contract, subject to all rules of law, concerning contracts in general except that a consideration is not necessary to its validity. § 600, CIVIL C.

ARTICLE 2.—WHAT MAY BE TRANSFERRED.

§ 3510. **What may be transferred.** Property of any kind may be transferred except as otherwise provided by this article. § 601, CIVIL C.

§ 3511. **Possibility not transferable.** A mere possibility, not coupled with an interest, cannot be transferred. § 602, CIVIL C.

§ 3512. **Right of re-entry not transferable.** A mere right of re-entry or of repossession for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby. § 603, CIVIL C.

ARTICLE 3.—MODE OF TRANSFER.

- § 604, Civil C. **§ 3513. How made.** A transfer may be made without writing in every case in which a writing is not expressly required by statute.
- § 605, Civil C. **§ 3514. Written transfers named.** A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this and the next two articles includes all these instruments unless it is specially applied to real property.
- § 606, Civil C. **§ 3515. Grant effectual only on delivery.** A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.
- § 607, Civil C. **§ 3516. Delivery presumed at its date.** A grant duly executed is presumed to have been delivered at its date.
- § 608, Civil C. **§ 3517. Delivery is absolute.** A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute; and the instrument takes effect thereupon discharged of any condition on which the delivery was made.
- § 609, Civil C. **§ 3518. Delivery in escrow.** A grant may be deposited by the grantor with a third person to be delivered on the performance of a condition and on delivery by the depositary it will take effect. While in the possession of the third person and subject to condition it is called an escrow.
- § 610, Civil C. **§ 3519. Redelivery does not retransfer.** Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.
- § 611, Civil C. **§ 3520. When deemed constructively delivered.** Though a grant is not actually delivered into the possession of the grantee it is yet to be deemed constructively delivered in the following cases:
1. When the instrument is by the agreement of the parties at the time of execution understood to be delivered and under such circumstances that the grantee is entitled to immediate delivery; or,
 2. When it is delivered to a stranger for the benefit of a grantee and his assent is shown or may be presumed.

ARTICLE 4.—INTERPRETATION OF GRANTS.

- § 612, Civil C. **§ 3521. Interpreted same as contracts.** Grants are to be interpreted in like manner with contracts in general except so far as is otherwise provided by this article.
- § 613, Civil C. **§ 3522. Limitation not controlled by words less clear.** A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.
- § 614, Civil C. **§ 3523. When recourse had to recitals.** If the operative words of a grant are doubtful recourse may be had to its recitals to assist the construction.
- § 615, Civil C. **§ 3524. In favor of grantee except public grants.** A grant is to be interpreted in favor of the grantee, except that a reservation in any grant and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.
- § 616, Civil C. **§ 3525. Former part prevails.** If several parts of a grant are absolutely irreconcilable the former part prevails.
- § 617, Civil C. **§ 3526. Without issue defined.** When a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words

such words must be taken to mean successors or issue living at the death of the person named as ancestor.

§ 3527. **Words unnecessary to fee.** Words of inheritance or succession are not requisite to transfer a fee in real property. § 618, Civil C.

ARTICLE 5.—EFFECT OF TRANSFER.

§ 3528. **Vests actual title.** A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied. § 619, Civil C.

§ 3529. **Thing includes incidents.** The transfer of a thing transfers also all its incidents unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself. § 620, Civil C.

§ 3530. **Benefit taken though unnamed.** A present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party thereto. § 621, Civil C.

CHAPTER 35.

TRANSFER OF REAL PROPERTY.

ARTICLE 1.—MODE OF TRANSFER.

§ 3531. **Only by law or writing.** An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by his agent thereunto authorized by writing. § 622, Civil C.

§ 3532. **By-laws empowering officers to execute.** Any foreign or domestic corporation may in its by-laws empower any one or more of its officers severally or conjointly to execute and acknowledge in its behalf conveyances, transfers, assignments, releases, satisfactions or other instruments affecting liens upon, titles to or interests in real estate. § 1, c. 42, 1893.

§ 3533. **Who executes if not so empowered.** In the absence of any by-laws the president or secretary of any corporation, and the president, secretary, treasurer or cashier of any loan, trust or banking corporation may execute and acknowledge such instruments when authorized by resolution of the board of directors. § 2, c. 42, 1893.

§ 3534. **Prior instruments legalized.** All instruments affecting liens upon, titles to or interests in real estate heretofore executed and acknowledged in good faith by the treasurer or cashier in behalf of any loan, trust or banking corporation are declared valid and effectual to the same extent as they would have been had the last two sections been in force at the time of their execution. § 3, c. 42, 1893. am'd.

§ 3535. Form of corporation signature. The signature of a corporation to any instrument mentioned in section 3532 shall be as follows:

..... (full name of corporation.)
 By (some officer authorized by resolution or the by-laws of the corporation to execute and acknowledge such instrument.)
 (official designation of person signing.)
 Attest:
 [Seal.], Secretary.

§ 623. Civil C.

§ 3536. Proved by subscribing witness. Seal unnecessary. The execution of a grant of such estate in real property, if it is not duly acknowledged, must, to entitle the grant to be recorded, be proved by a subscribing witness or as otherwise provided in sections 3581 and 3582. The absence of the seal of any grantor or his agent from any grant of an estate in real property heretofore or hereafter made shall not invalidate or in any manner impair the same.

§ 624. Civil C.

§ 3537. Form of grant. A grant of an estate in real property may be made in substance as follows:

This grant made the day of in the year, between A. B., of, of the first part, and C. D., of, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part in consideration of dollars, now received, all the real property situated in, and bounded (or described) as follows:

Witness the hand of the party of the first part.

A. B.

ARTICLE 2. — EFFECT OF TRANSFER.

§ 627. Civil C.

§ 3538. Passes easements. Creates an easement. A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed.

§ 628. Civil C.

§ 3539. Covenants implied from use of word "grant." From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed the following covenants and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

§ 629. Civil C.

§ 3540. Grant conclusive against whom. Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incum-

brancer who in good faith and for a valuable consideration, acquires a title or lien by an instrument that is first duly recorded.

§ 3541. **Grant valid pro tanto.** A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. § 630, Civil C.

§ 3542. **Title to highway.** A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof unless a different intent appears from the grant. § 631, Civil C.

§ 3543. **Attornment not necessary.** Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants, but no tenant who before notice of the grant shall have paid rent to the grantor must suffer any damage thereby. § 632, Civil C.

§ 3544. **Lineal and collateral warranties abolished.** Lineal and collateral warranties with all their incidents are abolished; but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law. § 633, Civil C.

§ 3545. **Grant presumes fee simple title.** A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. § 633, Civil C.

§ 3546. **Grant takes effect on performance of condition.** An instrument purporting to be a grant of real property to take effect upon a condition precedent passes the estate upon the performance of the condition. § 633, Civil C.

§ 3547. **After acquired title.** When a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title thereto the same passes by operation of law to the grantee or his successors. § 633, Civil C.

§ 3548. **Reconveyance when estate defeated by nonperformance of condition subsequent.** When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors by grant duly acknowledged for record. § 633, Civil C.

§ 3549. **Incumbrances defined.** The term "incumbrances" includes taxes, assessments and all liens upon real property. § 633, Civil C.

CHAPTER 36.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE 1.—MODE OF TRANSFER.

- § 634, Civil C. **§ 3550. Ships and trusts.** An interest in a ship or in an existing trust can be transferred only by operation of law or by a written instrument subscribed by the person making the transfer or by his agent.
- § 635, Civil C. **§ 3551. Other personalty.** The mode of transferring other personal property by sale is regulated by the chapter on that subject in this code.

ARTICLE 2.—WHAT OPERATES AS A TRANSFER.

- § 636, Civil C. **§ 3552. When title passes.** The title to personal property sold or exchanged passes to the buyer whenever the parties agree upon a present transfer and the thing itself is identified, whether it is separated from other things or not.
- § 637, Civil C. **§ 3553. When transfer by executory agreement operative.** Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery and offered it to the buyer, with intent to transfer the title thereto in the manner prescribed by the second subdivision of article 4 of chapter 42.
- § 638, Civil C. **§ 3554. Transfer by agent.** When the possession of personal property together with the power to dispose thereof is transferred by its owner to another person an executed sale by the latter, while in possession to a buyer in good faith and in the ordinary course of business for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind and does rescind the transfer made by him.

ARTICLE 3.—GIFTS.

- § 639, Civil C. **§ 3555. Gift defined.** A gift is a transfer of personal property made voluntarily and without consideration.
- § 640, Civil C. **§ 3556. Requisites of valid verbal gift.** A verbal gift is not valid unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.
- § 641, Civil C. **§ 3557. Irrevocable. Exception.** A gift, other than a gift in view of death, cannot be revoked by the giver.
- § 642, Civil C. **§ 3558. In view of death defined.** A gift in view of death is one which is made in contemplation, fear or peril of death and with intent that it shall take effect only in case of the death of the giver.
- § 643, Civil C. **§ 3559. When presumed.** A gift made during the last illness of the giver or under circumstances which would naturally impress him with an expectation of speedy death is presumed to be a gift in view of death.
- § 644, Civil C. **§ 3560. Revocable. Rights of purchaser.** A gift in view of death may be revoked by the giver at any time and is revoked by

his recovery from the illness or escape from the peril under the presence of which it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time; but when the gift has been delivered to the donee the rights of a bona fide purchaser from the donee before the revocation shall not be affected by the revocation.

§ 3561. Not affected by will. A gift in view of death is not affected by a previous will; nor by a subsequent will unless it expresses an intention to revoke the gift. § 645, Civil C.

§ 3562. Treated as a legacy as to creditors. A gift in view of death must be treated as a legacy so far as relates only to the creditors of the giver. § 646, Civil C.

CHAPTER 37.

RECORDING TRANSFERS.

ARTICLE 1.—WHAT MAY BE RECORDED.

§ 3563. What may be recorded. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter. § 647, Civil C.
§ 1, c. 47, 1879.

2. Judgments affecting the title to or the possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered may be recorded without acknowledgment or further proof.

3. Letters patent from the United States and final receivers' receipts from the United States land offices may be recorded without acknowledgment or further proof.

§ 3564. Prerequisites to record. Before an instrument can be recorded unless it belongs to a class provided for in either section 3563 or 3590 its execution must be acknowledged by the person executing the same, or if executed by a corporation, by the person authorized to execute it by sections 3532 and 3533, or proved by a subscribing witness, or as provided in sections 3581 and 3582, and the acknowledgment or proof certified in the manner prescribed by article 3 of this chapter. § 648, Civil C.
am'd.

§ 3565. When proved instrument recorded. An instrument proved and certified pursuant to sections 3581 and 3582 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise. § 649, Civil C.

§ 3566. Transfers by way of mortgage. Transfers of or liens on property by way of mortgage are required to be recorded in the cases specified in the chapter on mortgages. § 650, Civil C.
am'd.

ARTICLE 2.—MODE OF RECORDING.

§ 3567. Where recorded. Fee indorsed. Instruments entitled to be recorded must be recorded by the register of deeds of the county in which the real property affected thereby is situated. The § 651, Civil C.

register must in all cases indorse the amount of his fee for the recording on the instruments recorded.

§ 3568. **When deemed recorded.** An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the register's office with the proper officer for record.

§ 3569. **Instruments in unorganized counties, where recorded.** The unorganized counties of the state in any judicial subdivision are hereby attached to and made a part of the county where the court is held for such subdivision for the purpose of filing and recording all deeds, mortgages and other instruments, so long as such counties remain unorganized and the filing and record of all such deeds, mortgages and other instruments heretofore made in the manner herein provided for are hereby declared to be legal and valid.

§ 3570. **Separate books for grants and mortgages.** Grants, absolute in terms, are to be recorded in one set of books and mortgages in another.

§ 3571. **Duty of register.** The duties of registers of deeds in respect to recording instruments are prescribed by statute.

§ 3572. **Transfers of vessels.** The mode of recording transfers of vessels registered under the laws of the United States is regulated by acts of congress.

ARTICLE 3. — PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 3573. **At any place in state, before whom.** The proof or acknowledgement of an instrument may be made at any place within this state before a justice or clerk of the supreme court, or notary public.

§ 3574. **Within district in state, before whom.** The proof or acknowledgement of an instrument may be made in this state within the judicial district, county, subdivision or city for which the officer was elected or appointed, before either:

1. A judge or clerk of a court of record; or,
2. A mayor of a city; or,
3. A register of deeds; or,
4. A justice of the peace; or,
5. A United States circuit or district court commissioner; or,
6. A county auditor.

§ 3575. **Without state, but within United States, before whom.** The proof or acknowledgement of an instrument may be made without the state, but within the United States and within the jurisdiction of the officer, before either:

1. A justice, judge or clerk of any court of record of the United States.
2. A justice, judge or clerk of any court of record of any state or territory; or,
3. A notary public; or,
4. Any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.
5. A commissioner appointed for the purpose by the governor of this state, pursuant to the political code.

§ 3576. **Without the United States, before whom.** The proof or acknowledgement of an instrument may be made without the United States before either:

1. A minister, commissioner or charge d'affairs of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

2. A consul, vice consul or consular agent of the United States resident in the country where the proof or acknowledgment is made; or,

3. A judge, clerk, register or commissioner of a court of record of the country where the proof or acknowledgment is made; or,

4. A notary public of such country; or,

5. An officer authorized by the laws of the country where the proof or acknowledgment is taken to take proof or acknowledgments; or,

6. When any of the officers mentioned in this article are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal.

7. All proofs or acknowledgments heretofore taken according to the provisions of this chapter are hereby declared to be sufficiently authenticated and to be entitled to record, and all such records hereafter made shall be notice of the contents of the instruments so recorded.

§ 3577. What knowledge officer taking acknowledgment must have. The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is authorized to make it as provided in sections 3532 and 3533.

§ 659, Civil C.
am'd.

§ 3578. Conveyance by married woman. A conveyance or other instrument executed by a married woman has the same effect as if she was unmarried and may be acknowledged in the same manner.

§ 661, Civil C.
§ 2, c. 2, 1881.

§ 3579. How proof made, when not acknowledged. Proof of the execution of an instrument, when not acknowledged may be made either:

§ 662, Civil C.

1. By the party executing it, or either of them; or,

2. By a subscribing witness; or,

3. By other witnesses in cases mentioned in sections 3581 and 3582.

§ 3580. Knowledge required by officer taking proof. If, by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

§ 662, Civil C.

§ 3581. When other proof received. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

§ 663, Civil C.

1. When the parties and all the subscribing witnesses are dead; or,

2. When the parties and all the subscribing witnesses are nonresidents of the state; or,

3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,

4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or,

5. In case of the continued failure or refusal of the witness to testify for the space of one hour after his appearance.

§ 664, Civil C.

§ 3582. What proof must show. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,

2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature and that it is genuine; and,

3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature and that it is genuine; and,

4. The place of residence of the witness.

§ 665, Civil C.

§ 3583. Contents of certificate. An officer taking proof of the execution of an instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence.

§ 666, Civil C.
1, c. 2, 1887.

§ 3584. Forms of certificates. An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

1. Such certificate of acknowledgment, unless it is otherwise in this article provided, must be in substantially the following form:

State of....., } ss.
County of.....

On this.....day of....., in the year....., before me personally appeared....., known to me (or proved to me on the oath of.....) to be the person who is described in and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

2. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of....., } ss.
County of.....

On this.....day of....., in the year....., before me (here insert the name and quality of the officer), personally appeared....., known to me (or proved to me on the oath of.....) to be the president (or the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

3. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of }
 County of } ss.

On this day of, in the year before me (here insert the name and quality of the officer), personally appeared known to me (or proved to me on the oath of) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of and acknowledged to me that he subscribed the name of thereto as principal and his own name as attorney in fact.

4. All acknowledgments of deeds or other instruments in writing made by any deputy sheriff of this state shall be made substantially according to the following form:

State of North Dakota, }
 County of } ss.

On this day of, in the year before me, a, in and for said county, personally appeared, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that he subscribed the name of thereto as sheriff of said county and his own name as deputy sheriff.

§ 3585. Legalizing former acknowledgments. All ac- § 2, c. 2, 1887.
 knowledgments heretofore made by any deputy sheriff of the several counties of this state, either by or for himself as such deputy, or in the name of or for his principal, to any sheriff's certificate of sale, certificate of redemption, or sheriff's deed, or other instrument appertaining to the sale, redemption or conveyance of any real estate sold at sheriff's sale upon execution or by foreclosure, either by action or advertisement shall be and the same is hereby declared to be legal and of binding force and effect.

§ 3586. How officer's certificate authenticated. Officers § 666, Civil C.
 taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures followed by the name of their offices; also their seals of office, if by the laws of the territory, state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof.

§ 3587. Certificate of clerk. Acknowledgment before § 666, Civil C.
justice. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides must be accompanied by a certificate under the hand and seal of the clerk of the district court, or of any other county court of record of the county in which the justice resides, setting forth that such justice at the time of taking such proof or acknowledgment was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

§ 3588. Action to correct certificate. When the acknowl- § 667, Civil C.
 edgment or proof of execution of an instrument is properly made,

- but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.
- § 667, Civil C. **§ 3589. Action to prove instrument.** Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.
- § 667, Civil C. **§ 3590. What entitles judgment to record.** A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles the instrument to record with like effect as if acknowledged.
- § 668, Civil C.
am'd. **§ 3591. Authority of officers in taking proof.** Officers authorized to take the proof of instruments are authorized in such proceedings:
1. To administer oaths or affirmations.
 2. To employ and swear interpreters.
 3. To issue subpoenas, obedience to which may be enforced as provided in the code of civil procedure.
- § 669, Civil C. **§ 3592. Code does not affect former instruments.** The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument made before this amended code goes into effect, executed, acknowledged, proved or recorded is not affected by anything contained in this chapter, but depends for its validity and legality, except as to seals, upon the laws in force when the act was performed.
- § 670, Civil C. **§ 3593. Force and record of former instruments.** All conveyances of real property made before this amended code goes into effect and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof have the same force as evidence and may be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of this chapter.

ARTICLE 4. — EFFECT OF RECORDING OR THE WANT THEREOF.

- § 671, Civil C. **§ 3594. When conveyance first recorded makes prior unrecorded one void.** Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease or other conditional estate of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.
- § 672, Civil C. **§ 3595. "Conveyance" defined.** The term "conveyance" as used in the last section embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered or by which the title to any real property may be affected, except wills, executory contracts for the sale or purchase of real property and powers of attorney.
- § 673, Civil C. **§ 3596. Requisites of instrument to revoke power to convey.** No instrument containing a power to convey or execute instruments affecting real property which has been recorded is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

§ 3597. **Record constructive notice of execution.** The recording and deposit of an instrument proved and certified according to the provisions of sections 3565, 3579, 3580, 3581 and 3582 are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument, or the record thereof, or the transcript of the record to be read in evidence. § 674, Civil C.

§ 3598. **Unrecorded instrument valid as to whom.** An unrecorded instrument is valid as between the parties thereto and those who have notice thereof. § 675, Civil C.

CHAPTER 38.

UNLAWFUL TRANSFERS.

§ 3599. **Instruments made with intent to defraud void.** Every instrument other than a will affecting an estate in real property, including every charge upon real property or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or incumbrancers thereon is void as against every purchaser or incumbrancer for value of the same property, or the rents or profits thereof. § 676, Civil C.

§ 3600. **Privity to fraud cures it.** No instrument is to be avoided under the last preceding section in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made was privity to the fraud intended. § 677, Civil C.

§ 3601. **If power to revoke reserved, subsequent grant is revocation.** When a power to revoke or modify an instrument affecting the title to or the enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or incumbrancer for value operates as a revocation of the original instrument to the extent of the power in favor of such purchaser or incumbrancer. § 678, Civil C.

§ 3602. **When power deemed executed.** When a person having a power of revocation within the provisions of the last section is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it. § 679, Civil C.

§ 3603. **Good faith purchaser protected.** The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter. § 680, Civil C.

§ 3604. **Other unlawful transfers.** Other provisions concerning unlawful transfers are contained in chapter 96 of this code concerning the special relations of debtor and creditor. § 682, Civil C.

CHAPTER 39.

HOMESTEAD.

§ 1, c. 67, 1891.
am'd.

§ 3605. Homestead defined. Exempt. The homestead of every head of a family residing in this state, not exceeding in value five thousand dollars, and if within a town plat, not exceeding two acres in extent, and if not within a town plat, not exceeding in the aggregate more than one hundred and sixty acres, and consisting of a dwelling house in which the homestead claimant resides and all its appurtenances and the land on which the same is situated shall be exempt from judgment lien and from execution or forced sale except as provided in this chapter.

§ 2, c. 67, 1891.

§ 3606. How selected. If the homestead claimant is married the homestead may be selected from the separate property of the husband or, with the consent of the wife, from her separate property. When the homestead claimant is not married, but is the head of a family within the meaning of section 3625, the homestead may be selected from any of his or her property; provided, that the homestead so selected must in no case embrace different lots or tracts of land unless they are contiguous.

§ 3, c. 67, 1891.

§ 3607. When subject to execution. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. On debts secured by mechanic's or laborer's liens for work or labor done or material furnished exclusively for the improvement of the same.

2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.

3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.

§ 4, c. 67, 1891.

§ 3608. How conveyed. The homestead of a married person cannot be conveyed or incumbered, unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

§ 3609. Statute of limitations. No action, defense or counterclaim founded upon a right of homestead in property heretofore conveyed or incumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the taking effect of this section shall be effectual or maintainable, unless such action is commenced or such defense or counterclaim interposed on or before the first day of January, 1900; provided, nevertheless, that such limitation shall not apply if the homestead claimant was at the time of the execution of such conveyance or incumbrance in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action or the interposing of such defense or counterclaim.

§ 5, c. 67, 1891.
am'd.

§ 3610. When appraised. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 3607 is levied upon the homestead the judgment creditor may apply to the district court in the county in which such homestead is situated for the appointment of persons to appraise the value thereof.

§ 3611. **Application for appraisers.** The application for appraisers must be made upon a verified petition showing: § 6, c. 67, 1891. am'd.

1. The fact that an execution has been levied upon the homestead.
2. The name of the claimant.
3. That the value of the homestead exceeds the amount of the homestead exemption.

§ 3612. **Petition filed.** The petition must be filed with the clerk of the district court and a copy thereof with notice of the time and place of hearing served on the claimant at least ten days before the hearing. § 7, c. 67, 1891.

§ 3613. **Appointment of appraisers. Oath and duties.** At the hearing the court upon proof of the service of such notice and petition and of the facts stated in the petition may appoint three disinterested residents of the county to appraise the value of the homestead, who must take an oath impartially to appraise the same. They must view the premises and appraise the value thereof and if the appraised value exceeds the homestead exemption they must determine whether the real property claimed can be divided without material injury. § 8, c. 67, 1891. am'd.

§ 3614. **Report to judge.** Within fifteen days after their appointment the appraisers must present to the judge a report in writing, which report must show the appraised value of the homestead and their determination upon the matter of a division of the real property claimed.

§ 3615. **How homestead divided.** If from the appraisers' report it appears that the real property claimed as a homestead can be divided without material injury the court shall by an order direct the appraisers to set off to the claimant so much of the real property, including the residence, as will amount in value to the homestead exemption and the execution may be enforced against the remainder of the real property. § 9, c. 67, 1891. am'd.

§ 3616. **When sold.** If from the appraisers' report it appears to the court that the real property claimed as a homestead exceeds in value the amount of the homestead exemption and that it cannot be divided without material injury, he must make an order directing its sale under the execution; but at such sale no bid must be received unless it exceeds the amount of the homestead exemption. § 10, c. 67, 1891. am'd.

§ 3617. **Proceeds of sale exempt. Disposition of.** If the sale is made the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution; provided, that when the execution is against a husband, whose wife is living, the court may, in its discretion, direct the five thousand dollars to be deposited in court to be paid out only on the joint receipt of the husband and wife and it shall, whether paid directly to the claimant or to the husband and wife jointly, possess all the protection against legal process and voluntary disposition by the husband as did the original homestead premises. § 11, c. 67, 1891. am'd.

§ 3618. **Fees of appraisers.** The appraisers shall receive the same fees as jurors in civil cases in the district court, which with all other costs of these proceedings must be paid by the execution creditor in the first instance, but in the cases provided for in sections 3616 and 3617 the amount paid must be added as costs on execution and collected accordingly. § 12, c. 67, 1891.

§ 13, c. 67, 1891.
am'd.

§ 3619. Proceeds of sale exempt. If the homestead is conveyed as provided in section 3608 or sold for the satisfaction of any lien mentioned in section 3607, the price thereof or the proceeds of the sale beyond the amount necessary to satisfy such lien, and not exceeding in either case the amount of the homestead exemption, shall be entitled thereafter to the same protection against legal process as the law gives to the homestead.

§ 3620. Who may make declaration of homestead. Any person who is the head of a family may make a declaration of homestead in the manner provided in the next two sections, but a failure to make such declaration shall not impair the homestead right.

§ 3621. How executed and acknowledged. In order to select a homestead the husband or other head of the family, or in case the husband has not made such selection, the wife must execute and acknowledge in the same manner as a grant of real property is acknowledged a declaration of homestead and file the same for record.

§ 3622. Contents of. The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration for their joint benefit.
2. A statement that the person making it is residing on the premises and claims them as a homestead.
3. A description of the premises.
4. An estimate of their cash value.

§ 3623. Must be recorded. The declaration must be recorded in the office of the register of deeds of the county in which the land is situated.

§ 14, c. 67, 1891.

§ 3624. Effect of sale of homestead. The sale and disposition of one homestead shall not be held to prevent the selection or purchase of another as provided in this chapter.

§ 15, c. 67, 1891.

§ 3625. "Head of family" defined. The phrase "head of a family" as used in this chapter includes within its meaning:

1. The husband or wife when the claimant is a married person; but in no case are both husband and wife entitled each to a homestead under the provisions of this chapter.
2. Every person who has residing on the premises with him or her and under his or her care and maintenance, either:
 - (a) His or her child or the child of his or her deceased wife or husband, whether by birth or adoption.
 - (b) A minor brother or sister or the minor child of a deceased brother or sister.
 - (c) A father, mother, grandfather or grandmother.
 - (d) The father or mother, grandfather or grandmother of a deceased husband or wife.

(e) An unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

§ 16, c. 67, 1891.
am'd

§ 3626. Descent and distribution of homestead estates. Upon the death of a person in whom the title to real property constituting a homestead as defined in this chapter is vested a homestead estate in such real property shall survive, descend and be distributed to the persons and in the order following:

1. To the surviving husband or wife for life; or,

2. There being no surviving husband or wife, to the decedent's minor child or children until the youngest attains majority; or,

3. The surviving husband or wife dying before, then thereafter to the decedent's minor child or children until the youngest attains majority.

§ 3627. **"Homestead estate" and "youngest" defined.** The term "homestead estate" employed in this chapter shall be construed to mean the right to the possession, use, control, income and rents of the real property held or occupied by such decedent as a homestead at death; and the term "youngest" as employed in this chapter shall be construed to mean the decedent's child, whether by birth or adoption, last to attain majority.

§ 3628. **Ascertaining and setting off homestead after death of owner.** If a homestead in such real property had been ascertained and set off to such decedent before death as provided in this chapter the homestead estate provided for in section 3626 shall be commensurate therewith and must not be again ascertained; but if such homestead had not been so ascertained and set off, the county court must ascertain in the manner provided in the probate code and set off and decree the homestead estate to the surviving husband or wife, or minor child or children, as the case may be; provided, however, that the real property which is subjected to the homestead estate by the county court and in which such estate is ascertained and set off by such court must not exceed in value or area the value or area prescribed in section 3605.

§ 3629. **Decree of county court. Provisions of.** The county court shall ascertain and set forth in its decree setting off the homestead estate to the surviving husband or wife or minor child or children, whether ascertained by it or not, the name of and the dates at which the minor child, or each minor child, if more than one, will attain majority and direct in such decree that in case the surviving husband or wife dies before the last of such dates is reached, the minor child or children then surviving shall from the time of such death succeed to such homestead estate until the youngest attains majority. If a surviving minor child dies before a full satisfaction of the homestead estate such estate shall thereafter be proceeded with as though such child had never lived.

§ 3630. **Estate descends exempt. Exception.** The real property subjected to such homestead estate shall, subject to the full satisfaction of such estate, descend exempt from decedent's debts except as provided in section 3607 and be distributed in the same manner as real property not subjected to a homestead estate, or as directed in the decedent's will; provided, that in no case shall the real property constituting the homestead of a decedent, or any part thereof, descend or be distributed to any person other than the surviving husband or wife and decedent's heirs in the direct descending line as prescribed in chapter 41 until all the decedent's debts are fully paid.

§ 3631. **May be devised subject to homestead estate.** Subject to the homestead estate as defined by law and the payment of decedent's debts, the homestead may be devised to persons other than those mentioned in section 3630 like other real property of the testator.

§ 18, c. 67, 1891.
am'd.

§ 3632. **Conveyance in case of insanity.** If either the husband or wife shall become insane, the county court of the county in which the homestead is situated may, upon application of the husband

§ 19, c. 67, 1891.
am'd.

or wife not insane and upon due proof of such insanity, make an order permitting the husband or wife not insane to sell and convey or mortgage such homestead.

§ 3633. Requisites of petition. Such application shall be made by a petition to the court subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age and sex of the children of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife, relating to the circumstances or necessities of the applicant and his or her family, as he or she may rely upon in support of the petition.

§ 3634. Notice, on whom and how served. Notice of the application for such order shall be served upon such persons and in such manner as the court shall by order direct and in such order the court shall fix a time for the hearing of the application.

§ 3635. Order of sale recorded. A certified copy of the order granting permission to sell and convey or mortgage the homestead shall be filed for record and recorded in the office of the register of deeds of the county in which the homestead is situated.

§ 21, c. 67, 1891.
am'd.

§ 3636. Court may direct disposition of funds. On granting an order authorizing a sale of the homestead the court may direct that a part of the funds derived from such sale, not to exceed one-third thereof be set aside and may direct its investment for the use and benefit of the insane husband or wife. If such husband or wife dies while insane the sum so set aside reverts to the surviving husband or wife. If he or she is dead at the time the insane husband or wife dies, then such sum shall descend in accordance with the laws of succession as provided in this code.

§ 22, c. 67, 1891.
am'd.

§ 3637. Appeal. On the hearing of such application any of the kindred of the insane person may appear and be heard in the premises, and may appeal from any order made on the subject to the district court for the county in which the land is situated in the manner provided for appeals in other cases.

§ 3638. Such conveyance valid. A conveyance or mortgage of the homestead made pursuant to the last six sections shall be as valid and effectual as if the insane husband or wife had been sane and had joined in the execution and acknowledgment of such conveyance or mortgage.

CHAPTER 40.

WILL.

ARTICLE 1.—EXECUTION AND REVOCATION OF WILL.

§ 3639. **Who may make.** Every person over the age of eighteen years of sound mind may by last will dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in chapter 41 of this code, being chargeable in both cases with the payment of all the decedent's debts as provided in the probate code. § 683, Civil C. am'd.

§ 3640. **Married woman, same right.** A married woman may dispose of all her separate estate by will without the consent of her husband and may alter or revoke the will in like manner as if she was single. Her will must be executed and proved in like manner as other wills. § 684, Civil C.

§ 3641. **Undue influence.** A will or part of a will procured to be made by duress, menace, fraud or undue influence may be denied probate; and a revocation procured by the same means may be declared void. § 685, Civil C.

§ 3642. **What may be willed.** Every estate and interest in real or personal property to which heirs, husband, widow or next of kin might succeed may be disposed of by will. § 686, Civil C.

§ 3643. **Made to any one capable of taking.** A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by statute so to take. § 687, Civil C. am'd.

§ 3644. **Nuncupative will. Requisites.** To make a nuncupative will valid and to entitle it to be admitted to probate the following requisites must be observed: § 688, Civil C.

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must at the time have been in actual military service in the field or doing duty on shipboard at sea and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

§ 3645. **Mutual will.** A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will. § 689, Civil C.

§ 3646. **Conditional will may be denied probate.** A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition. § 690, Civil C.

§ 3647. **Olographic will.** An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form and may be made in or out of this state and need not be witnessed. § 691, Civil C.

§ 691, Civil C.

§ 3648. How wills must be executed and attested. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority.

3. The testator must at the time of subscribing or acknowledging the same declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence.

§ 692, Civil C.

§ 3649. What unnecessary in nuncupative wills. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

§ 693, Civil C.

§ 3650. How witnessed. A witness to a written will must write with his name his place of residence; and a person who subscribes a testator's name by his direction must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

§ 694, Civil C.

§ 3651. When codicil republishes will. The execution of a codicil, referring to a previous will, has the effect to republish the will as modified by the codicil.

§ 695, Civil C.

§ 3652. Law of place governs. A will of real or personal property, or both, or a revocation thereof made out of this state by a person not having his domicile in this state is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it was made in this state and according to the provisions of this chapter.

§ 696, Civil C.

§ 3653. Validity of will depends on compliance with law. No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

§ 697, Civil C.

§ 3654. Law where made governs, though domicile subsequently changed. Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated as to the validity of its execution by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place by the law of which such will would be void.

§ 698, Civil C.

§ 3655. Deposit with county judge. His duties. Every county judge must deposit in his office any will delivered to him for that purpose and give a written receipt to the depositor; and must inclose such will in a sealed wrapper so that it cannot be read and indorse thereon the name of the testator, his residence and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section.

§ 699, Civil C.

§ 3656. How disposed of. A will deposited under the provisions of the last section must be delivered only:

1. To the testator in person.

2. Upon his written order duly proved by the oath of a subscribing witness.

3. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or,

4. If there is no such indorsement and if the will was not deposited with the county judge having jurisdiction of its probate, then to the county judge who has jurisdiction.

§ 3657. Opened after death by county judge. The county judge with whom a will is deposited, or to whom it is delivered, must after the death of the testator publicly open and examine the will and file it in his office, there to remain until duly proved, or deliver it to the county judge having jurisdiction of its probate. § 700, Civil C.

§ 3658. Proof of lost will. A lost or destroyed will of real or personal property, or both, may be established in the cases provided in the probate code or any act in force on that subject. § 701, Civil C.

§ 3659. Revocation of wills. Except in the cases in this chapter mentioned no written will, nor any part thereof, can be revoked or altered otherwise than: § 702, Civil C.

1. By a written will or other writing of the testator, declaring such revocation or alteration and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by some person in his presence and by his direction.

§ 3660. How cancellation must be proved. When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction must be proved by two witnesses. § 703, Civil C.

§ 3661. Effect of partial erasure. A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but when, in order to effect a new disposition the testator attempts to revoke a provision of the will by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected. § 704, Civil C.

§ 3662. Revocation of will in duplicate. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates. § 705, Civil C.

§ 3663. When subsequent will revokes prior. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will. § 706, Civil C.

§ 3664. Revocation does not revive former will without express words. If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former unless it appears by the terms of such revocation that it was his intention to revive the former will, or unless after such destruction, canceling or revocation he duly republishes the prior will. § 707, Civil C. am'd.

§ 3665. Will made before marriage revoked, if issue unprovided for. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, § 708, Civil C.

or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision: and no other evidence to rebut the presumption of such revocation can be received.

§ 708, Civil C. **§ 3666. Same, if wife unprovided for.** If after making a will the testator marries and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract or unless she is provided for in the will or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

§ 709, Civil C. **§ 3667. Marriage of woman revokes.** A will executed by an unmarried woman is revoked by a subsequent marriage and is not revived by the death of her husband.

§ 710, Civil C. **§ 3668. Effect of sale of devised property.** An agreement made by a testator for the sale or transfer of property disposed of by a will previously made does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement for a specific performance or otherwise against the devisees or legatees as might be had against the testator's successors if the same had passed by succession.

§ 711, Civil C. **§ 3669. Incumbrance not a revocation.** A charge or incumbrance upon any estate for the purpose of securing the payment of money or the performance of any covenant or agreement is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass subject to such charge or incumbrance.

§ 712, Civil C. **§ 3670. Partial disposal, not revocation.** A conveyance, settlement or other act of a testator by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation, but the will passes the property which would otherwise devolve by succession.

§ 713, Civil C. **§ 3671. When instrument expresses intent it is a revocation.** If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

§ 714, Civil C. **§ 3672. Revocation revokes codicils.** The revocation of a will revokes all its codicils.

§ 715, Civil C. **§ 3673. Child unprovided for succeeds as in intestacy.** Whenever a testator has a child born after the making of his will, either in his lifetime or after his death and dies leaving such child unprovided for by any settlement and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

§ 715, Civil C. **§ 3674. Children omitted succeed as in intestacy.** When any testator omits to provide in his will for any of his children or for the issue of any deceased child, unless it appears that such omission was intentional, such child or the issue of such child must have the same share in the estate of the testator, as if he had died intestate, and succeeds thereto as provided in the preceding section.

§ 3675. Rules governing assignments of shares in such cases. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in a will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees in proportion to the value they may respectively receive under the will unless the obvious intention of the testator in relation to some specific devise or bequest or other provision in the will would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment and a different apportionment, consistent with the intention of the testator, may be adopted. § 715, Civil C.

§ 3676. Take nothing under three last sections, when. If such children or their descendants so unprovided for had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing by virtue of the provisions of the three preceding sections. § 715, Civil C.

§ 3677. What devise of land conveys. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate. § 715, Civil C.

§ 3678. Devisee's descendants take. When any estate is devised to any child or other relation of the testator and the devisee dies before the testator leaving lineal descendants, such descendants take the estate so given by the will in the same manner as the devisee would have done had he survived the testator. § 716, Civil C.

§ 3679. When gift to witness void. All beneficial devises, legacies or gifts whatever made or given in any will to a subscribing witness thereto are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to the will. § 717, Civil C.

§ 3680. Witness takes if entitled to share in estate. If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will in proportion to and out of the parts devised or bequeathed to them. § 718, Civil C.

§ 3681. Subsequent incompetency of witness does not avoid will. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved. § 718, Civil C.

§ 3682. Feloniously causing death of another, bar to taking under his will. No person who has been finally convicted of feloniously causing the death of another shall take or receive any property or benefit by succession, will or otherwise, directly or indirectly, by reason of the death of such person, but all property of the deceased and all rights conditioned upon his death shall vest and be determined the same as if the person convicted was dead.

§ 719, Civil C.

§ 3683. After acquired property passes by will. Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising or in any other terms denoting the intent of the testator to devise, all the real estate of such testator passes all the real estate which such testator was entitled to devise at the time of his decease.

ARTICLE 2. — INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS.

§ 720, Civil C.

§ 3684. Intention of testator governs. A will is to be construed according to the intention of the testator. When his intention cannot have effect to its full extent it must have effect as far as possible.

§ 721, Civil C.

§ 3685. Will excludes oral declarations. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions the testator's intention is to be ascertained from the words of the will taking into view the circumstances under which it was made, exclusive of his oral declarations.

§ 722, Civil C.

§ 3686. Rules of interpretation. In interpreting a will, subject to the laws of this state the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

§ 723, Civil C.

§ 3687. Construed together, if several. Several testamentary instruments executed by the same testator are to be taken and construed together as one instrument.

§ 724, Civil C.

§ 3688. Parts construed together. If irreconcilable, latter prevails. All parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but when several parts are absolutely irreconcilable the latter must prevail.

§ 725, Civil C.

§ 3689. Distinct devise not affected by words less clear. A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

§ 726, Civil C.

§ 3690. Ambiguities explained by reference to other parts. When the meaning of any part of a will is ambiguous or doubtful it may be explained by any reference thereto or recital thereof in another part of the will.

§ 727, Civil C.

§ 3691. Words taken in ordinary sense. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected and that other can be ascertained.

§ 728, Civil C.

§ 3692. Give every expression effect. The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render some of the expressions inoperative.

§ 729, Civil C.

§ 3693. So as to prevent intestacy. Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

§ 3694. **Technical words.** Technical words in a will are to be taken in their technical sense unless the context clearly indicates a contrary intention. § 730, Civil C.

§ 3695. **Same. Unnecessary.** Technical words are not necessary to give effect to any species of disposition by will. § 731, Civil C.

§ 3696. **Term "heirs" not requisite to devise fee.** The term "heirs" or other words of inheritance are not requisite to devise a fee and a devise of real property passes all the estate of the testator unless otherwise limited. § 732, Civil C.

§ 3697. **Property embraced in power passes by will.** Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of a testator. § 733, Civil C.

§ 3698. **When all property passes.** A devise or bequest of all the testator's real or personal property in express terms or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death. § 734, Civil C.

§ 3699. **Devise of residue passes what.** A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will. § 735, Civil C.

§ 3700. **Bequest of residue passes what.** A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will. § 736, Civil C.

§ 3701. **When passes to those entitled to succeed.** A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representative," or "personal representative," or "family," "issue," "descendants," "nearest," or "next of kin" of any person without other words of qualification and when the terms are used as words of donation and not of limitation vests the property in those who would be entitled to succeed to the property of such person according to the provisions of the chapter on succession in this code. § 737, Civil C.

§ 3702. **When words of donation and not limitation.** The terms mentioned in the last section are used as words of donation and not limitation when the property is given to the person so designated directly and not as a qualification of an estate given to the ancestor of such person. § 738, Civil C.

§ 3703. **Postponed possession.** Words in a will referring to death or survivorship simply, relate to the time of the testator's death, unless possession is actually postponed when they must be referred to the time of possession. § 739, Civil C.

§ 3704. **Class includes all.** A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period it includes also all persons coming within the description before the time to which possession is postponed. § 740, Civil C.

§ 3705. **When realty deemed personalty.** When a will directs the conversion of real property into money such property and all its proceeds must be deemed personal property from the time of the testator's death. § 741, Civil C.

- § 742, Civil C. **§ 3706. Unborn child included in class.** A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.
- § 743, Civil C. **§ 3707. How imperfect description corrected.** When applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received.
- § 744, Civil C. **§ 3708. Testamentary dispositions vest at death.** Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.
- § 745, Civil C. **§ 3709. Divested only by precise contingency.** A testamentary disposition when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.
- § 746, Civil C. **§ 3710. When disposition fails on death of devisee.** If a devisee or legatee dies during the lifetime of the testator the testamentary disposition to him fails, unless an intention appears to substitute some other in his place except as provided in section 3678.
- § 747, Civil C. **§ 3711. Interests in remainder unaffected.** The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder who survive the testator.
- § 748, Civil C. **§ 3712. Conditional disposition defined.** A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated.
- § 749, Civil C. **§ 3713. Condition precedent.** A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.
- § 750, Civil C. **§ 3714. When disposition on condition vests.** When a testamentary disposition is made upon a condition precedent nothing vests until the condition is fulfilled, except when such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof and the impossibility was unknown to the testator or arose from an unavoidable event subsequent to the execution of the will.
- § 751, Civil C. **§ 3715. When condition deemed performed.** A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally complied with.
- § 752, Civil C. **§ 3716. Condition subsequent.** A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.
- § 753, Civil C. **§ 3717. Owners in common.** A devise or legacy given to more than one person vests in them as owners in common.
- § 754, Civil C. **§ 3718. Advancement not ademption of legacy.** Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

ARTICLE 3. — GENERAL PROVISIONS.

- § 755, Civil C. **§ 3719. Legacies classified.** Legacies are distinguished and designated according to their nature as follows:

1. A legacy of a particular thing specified and distinguished from all others of the same kind belonging to the testator is specific; if such legacy fails resort cannot be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails in whole or in part resort may be had to the general assets as in case of a general legacy.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which it is payable fails, resort may be had to the general assets as in case of a general legacy.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

5. All other legacies are general legacies.

§ 3720. Property chargeable with payment of debts. § 756, Civil C. am'd.
When a person dies intestate all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the probate code.

§ 3721. Order of resort for payment of debts. § 757, Civil C. am'd.
The property of a testator, except as otherwise specially provided in this code and the probate code must be resorted to for the payment of debts in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed; and,

5. All other property ratably.

Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

§ 3722. Same for payment of legacies. § 758, Civil C. am'd.
The property of a testator, except as otherwise specially provided in this code and the probate code, must be resorted to for the payment of legacies in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is specifically devised or bequeathed.

§ 3723. Preferred legacies. § 759, Civil C.
Legacies to husband, widow or kindred of any class are chargeable only after legacies to persons not related to the testator.

§ 3724. Rules governing abatement. § 760, Civil C.
Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

§ 3725. Sale of property. § 761, Civil C.
In a specific devise or legacy the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the county court to sell the property devised or bequeathed in the cases herein provided.

§ 3726. When rights of purchaser not impaired by devise. § 762, Civil C.
The rights of a purchaser or incumbrancer of real property in good faith and for value derived from any person claiming the same by succession are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing

such devise is duly proved as a will, and recorded in the office of the county court having jurisdiction thereof, or unless written notice of such devise is filed with the county judge of the county where the real property is situated within four years after the devisor's death.

- § 763, Civil C. **§ 3727. Duty of legatees for life.** When specific legacies are for life only the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property expressing that the same is in his custody for life only, and that on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee or to the personal representative, as the case may be.
- § 764, Civil C. **§ 3728. Income after death.** In case of a bequest of the interest or income of a certain sum or fund the income accrues from the testator's death.
- § 765, Civil C. **§ 3729. Legacy in fear of death satisfied before death.** A legacy or a gift in contemplation, fear or peril of death may be satisfied before death.
- § 766, Civil C. **§ 3730. When legacies and annuities due.** Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.
- 767, Civil C. **§ 3731. Interest after due.** Legacies bear interest from the time when they are due and payable, except that legacies for maintenance or to the testator's widow bear interest from the testator's decease.
- 768, Civil C. **§ 3732. Intention controls.** The four preceding sections are in all cases to be controlled by a testator's express intention.
- § 769, Civil C. **§ 3733. Who entitled to letters testamentary.** When it appears by the terms of a will that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor is entitled to letters testamentary in like manner as if he had been named executor.
- § 770, Civil C. **§ 3734. Authority to executor to appoint, void.** An authority to an executor to appoint an executor is void.
- § 771, Civil C. **§ 3735. Executor has no power before qualifying. Exception.** No person has any power as an executor until he qualifies, except that before letters have been issued he may pay funeral charges and take necessary measures for the preservation of the estate.
- § 772, Civil C. **§ 3736. Executor of executor.** No executor of an executor, as such, has any power over the estate of the first testator.
- § 773, Civil C. **§ 3737. Will includes codicil.** The term "will," as used in this code includes all codicils as well as wills.
- § 774, Civil C. **§ 3738. What law governs.** Except as otherwise provided the validity and interpretation of wills is governed, when relating to real property within this state by the law of this state; when relating to personal property, by the law of the testator's domicile.
- § 775, Civil C.
am'd. **§ 3739. Liability of devisees and legatees.** Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the probate code.

CHAPTER 41.

SUCCESSION.

§ 3740. **Succession defined.** Succession is the coming in of another to take the property of one who dies without disposing of it by will. § 776, Civil C.

§ 3741. **Property passes to heirs.** The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the county court and to the possession of any administrator appointed by that court for the purpose of administration. § 777, Civil C.

§ 3742. **Order of succession.** When any person having title to any estate, not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the probate code, subject to the payment of his debts in the following manner: § 778, Civil C.
§ 1, c. 50, 1893.

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child or issue of such child. If the decedent leaves a surviving husband or wife and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation: but if there is no child of the decedent living at his death, the remainder goes to all of his lineal descendants and if all the descendants are in the same degree of kindred to the decedent they share equally; otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living or to the children living and the issue of the deceased child or children by right of representation.

2. If the decedent leaves no issue and the estate does not exceed in value the sum of five thousand dollars all the estate goes to the surviving husband or wife and all the property in excess of five thousand dollars in value, one-half thereof goes to the surviving husband or wife and the other half goes to the decedent's father and if he is dead to the decedent's mother. If the decedent leaves no issue, nor husband, nor wife the estate must go to the father, and if he is dead to the mother. If the decedent leaves a surviving husband or wife and no issue and no father, nor mother, nor brother nor sister, the whole estate goes to the surviving husband or wife.

3. If there is no issue, nor husband, nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent and to the children of any deceased brother or sister by right of representation.

4. If the decedent leaves no issue, nor husband, nor wife, nor father and no brother or sister is living at the time of his death the estate goes to his mother to the exclusion of the issue, if any, of deceased brothers or sisters.

5. If the decedent leaves no issue, nor husband nor wife and no father, nor mother, nor brother, nor sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However, if the decedent leaves several children, or one child and the issue of one or more children and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children of the same parent and to the issue of any such other children, who are dead, by right of representation.

6. If at the death of such child, who dies under age, not having been married, all the other children of the parents are also dead and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

7. If the decedent leaves no husband, wife or kindred the estate escheats to the state for the support of common schools.

§ 779, Civil C.
§ 1, c. 52, 1893.

§ 3743. Dower and courtesy abolished. Dower and courtesy are abolished.

§ 780, Civil C.

§ 3744. Inheritance by illegitimate child. Every illegitimate child is an heir of the person who in writing signed in the presence of a competent witness acknowledges himself to be the father of such child; and in all cases is an heir of his mother and inherits his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred either lineal or collateral, unless before his death his parents shall have intermarried and his father after such marriage acknowledges him as his child or adopts him into his family, in which case such child and all the legitimate children are considered brothers and sisters and on the death of either of them intestate and without issue the others inherit his estate and are heirs, as hereinbefore provided in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law or dissolved by divorce are legitimate.

§ 781, Civil C.

§ 3745. Inheritance from illegitimate child. If an illegitimate child who has not been acknowledged or adopted by his father dies intestate without lawful issue, his estate goes to his mother, or in case of her decease, to her heirs at law.

§ 782, Civil C.

§ 3746. How degree of kindred established. The degree of kindred is established by the number of generations and each generation is called a degree.

§ 783, Civil C.

§ 3747. Lineal and collateral. The series of degrees form the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

§ 3748. **Ascending and descending.** The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends. § 784, Civil C.

§ 3749. **Degrees in direct line.** In the direct line there are as many degrees as there are generations. Thus the son is with regard to the father in the first degree, the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons. § 785, Civil C.

§ 3750. **Computation of degrees in collateral line.** In the collateral line the degrees are counted by generations from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included and the ancestor counted but once. Thus brothers are related in the second degree, uncle and nephew in the third degree, cousins-german in the fourth degree and so on. § 786, Civil C.

§ 3751. **Kindred of half blood inherit.** Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance. § 787, Civil C.

§ 3752. **Advancements deducted from share.** Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child or other lineal descendant is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue and must be taken by such child or other lineal descendant toward his share of the estate of the decedent. § 788, Civil C.

§ 3753. **Excess not refunded.** If the amount of such advancement exceeds the share of the heir receiving the same he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share he is entitled to so much more as will give him his full share of the estate of the decedent. § 789, Civil C.

§ 3754. **Advancements defined.** All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement or acknowledged in writing as such by the child or other successor or heir. § 790, Civil C.

§ 3755. **Expressed value governs.** If the value of the estate so advanced is expressed in the conveyance or in the charge thereof made by the decedent or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given as nearly as the same can be ascertained. § 791, Civil C.

§ 3756. **Deducted from issue of person to whom made.** If any child or other lineal descendant receiving advancement dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement in like manner as if the advancement had been made directly to them. § 792, Civil C.

- § 793, Civil C. **§ 3757. Inheritance by representation.** Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.
- § 794, Civil C. **§ 3758. Aliens may take.** Aliens may take in all cases by succession as well as citizens; and no person, capable of succeeding under the provisions of this chapter, is precluded from such succession by reason of the alienage of any relative.
- § 795, Civil C. **§ 3759. If there are no heirs, escheats to state.** If there is no one capable of succeeding under the preceding sections and the title fails from a defect of heirs the property of a decedent devolves and escheats to the state and an action for the recovery of such property and to reduce it into the possession of the state or for its sale and conveyance may be brought by the state's attorney in the district court of the county or judicial subdivision in which the property is situated.
- § 796, Civil C. **§ 3760. Subject to charges and trusts.** Real property passing to the state under the preceding section, whether held by the state or its grantees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.
- § 797, Civil C. **§ 3761. Liability of those who succeed.** Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the probate code.

CHAPTER 42.

OBLIGATIONS.

ARTICLE 1. — DEFINITION OF OBLIGATIONS.

- § 798, Civil C. **§ 3762. Obligation defined.** An obligation is a legal duty by which a person is bound to do or not to do a certain thing.
- § 799, Civil C. **§ 3763. Origin and enforcement.** An obligation arises either from:
1. The contract of the parties; or,
 2. The operation of law.
- An obligation arising from operation of law may be enforced in the manner provided by law or by civil action or proceeding.

ARTICLE 2. — INTERPRETATION OF OBLIGATIONS.

GENERAL RULES OF INTERPRETATION.

- § 800, Civil C. **§ 3764. Rules of interpretation.** The rules which govern the interpretation of contracts are prescribed by article 7 of chapter 43. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

JOINT OR SEVERAL OBLIGATIONS.

§ 3765. **Obligations classified.** An obligation imposed upon § 801, Civil C.
several persons, or a right created in favor of several persons, may be:

1. Joint.
2. Several; or,
3. Joint and several.

§ 3766. **When presumed joint.** An obligation imposed upon § 802, Civil C.
several persons or a right created in favor of several persons is presumed to be joint and not several, except in the special cases mentioned in the article on the interpretation of contracts. This presumption in the case of a right can be overcome only by express words to the contrary.

§ 3767. **Contribution.** A party to a joint, or joint and several § 803, Civil C.
obligation who satisfies more than his share of the claim against all may require a proportionate contribution from all the parties joined with him.

CONDITIONAL OBLIGATIONS.

§ 3768. **Defined.** An obligation is conditional when the rights § 804, Civil C.
or duties of any party thereto depend upon the occurrence of an uncertain event.

§ 3769. **Conditions classified.** Conditions may be precedent, § 805, Civil C.
concurrent or subsequent.

§ 3770. **Condition precedent.** A condition precedent is one § 806, Civil C.
which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed.

§ 3771. **Concurrent.** Conditions concurrent are those which § 807, Civil C.
are mutually dependent and are to be performed at the same time.

§ 3772. **Subsequent.** A condition subsequent is one referring § 808, Civil C.
to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

§ 3773. **Prerequisites to enforcement of obligation.** Be- § 809, Civil C.
fore any party to an obligation can require another party to perform any act under it he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent, so imposed upon him, on the like fulfillment by the other party, except as provided by the next section.

§ 3774. **Enforcement without performance, when per- § 810, Civil C.
formance waived.** If a party to an obligation gives notice to another before the latter is in default that he will not perform the same upon his part and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation, without previously performing or offering to perform any conditions upon his part in favor of the former party.

§ 3775. **Impossible or unlawful conditions are void.** A § 811, Civil C.
condition in a contract, the fulfillment of which is impossible or unlawful within the meaning of the article on the object of contracts or which is repugnant to the nature of the interest created by the contract is void.

§ 3776. **Forfeiture strictly interpreted against party § 812, Civil C.
benefited.** A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

ALTERNATIVE OBLIGATIONS.

- § 813, Civil C. **§ 3777. Option to perform alternative acts.** If an obligation requires the performance of one of two acts in the alternative the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.
- § 814, Civil C. **§ 3778. Option passes when not exercised within time.** If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.
- § 815, Civil C. **§ 3779. Must select one in its entirety.** The party having the right of selection between alternative acts must select one of them in its entirety and cannot select part of one and part of another without the consent of the other party.
- § 816, Civil C. **§ 3780. Valid one prevails.** If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance the obligation is to be interpreted as though the other stood alone.

ARTICLE 3.—TRANSFER OF OBLIGATIONS.

- § 817, Civil C. **§ 3781. Burden transferred with beneficiary's consent.** The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 3790.
- § 818, Civil C. **§ 3782. Right arising out of may be transferred.** A right arising out of an obligation is the property of the person to whom it is due and may be transferred as such.
- § 819, Civil C. **§ 3783. Non-negotiable contract transferred by indorsement.** A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.
- § 819, Civil C. **§ 3784. Certain covenants run with land.** Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they had personally entered into them. Such covenants are said to run with the land.
- § 820, Civil C. **§ 3785. What so run.** The only covenants which run with the land are those specified in this article and those which are incidental thereto.
- § 821, Civil C. **§ 3786. Made for benefit of property, runs.** Every covenant contained in a grant of an estate in real property which is made for the direct benefit of the property or some part of it then in existence runs with the land.
- § 822, Civil C. **§ 3787. What last section includes.** The last section includes covenants of warranty, for quiet enjoyment or for further

assurance on the part of a grantor and covenants for the payment of rent, or of taxes or assessments upon the land on the part of a grantee.

§ 3788. **Covenants limited to certain assigns.** A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property and made by the covenantor expressly for his assigns or to the assigns of the covenantee runs with the land so far only as the assigns thus mentioned are concerned. § 823, Civil C.

§ 3789. **Binds only owner of whole estate.** A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property. § 824, Civil C.

§ 3790. **Liable while holding only.** No one merely by reason of having acquired an estate subject to a covenant running with the land is liable for breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits. § 825, Civil C.

§ 3791. **Burden or benefit apportioned.** When several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained and if not, then according to their respective interests in point of quantity. § 826, Civil C.

ARTICLE 4.—EXTINCTION OF OBLIGATIONS.

PERFORMANCE.

§ 3792. **Full performance extinguishes.** Full performance of an obligation by the party whose duty it is to perform it or by any other person on his behalf and with his assent, if accepted by the creditor, extinguishes it. § 827, Civil C.

§ 3793. **Performance by one extinguishes liability of all.** Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all. § 828, Civil C.

§ 3794. **Performance to one extinguishes. Exception.** An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership which is regulated by the chapter on deposit. § 829, Civil C.

§ 3795. **Performance as directed extinguishes.** If a creditor or any one of two or more joint creditors at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance. § 830, Civil C.

§ 3796. **When partial performance extinguishes pro tanto.** A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary. § 831, Civil C.

§ 3797. **Payment defined.** Performance of an obligation for the delivery of money only is called payment. § 832, Civil C.

§ 833, Civil C.

§ 3798. Performance, how applied when there are several obligations. When a debtor under several obligations to another does an act by way of performance in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If at the time of the performance the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

2. If no such application is then made the creditor within a reasonable time after such performance may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him, both individually and as a trustee, he must unless otherwise directed by the debtor apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

3. If neither party makes such application within the time prescribed herein the performance must be applied to the extinction of obligations in the following order and if there is more than one obligation of a particular class, to the extinction of all in that class ratably:

- (a) Of interest due at the time of the performance.
- (b) Of principal due at that time.
- (c) Of the obligation earliest in date of maturity.
- (d) Of an obligation not secured by a lien or collateral undertaking.
- (e) Of an obligation secured by a lien or collateral undertaking.

OFFER OF PERFORMANCE.

§ 834, Civil C.

§ 3799. Obligation extinguished by. An obligation is extinguished by an offer of performance made in conformity to the rules herein prescribed and with intent to extinguish the obligation.

§ 835, Civil C.

§ 3800. Not by offer of partial performance. An offer of partial performance is of no effect.

§ 836, Civil C.

§ 3801. Must be by or with assent of debtor. An offer of performance must be made by the debtor or by some person on his behalf and with his assent.

§ 837, Civil C.

§ 3802. To creditor or one authorized by him. An offer of performance must be made to the creditor, or to any one of two or more joint creditors or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

§ 838, Civil C.

§ 3803. Where may be made. In the absence of an express provision to the contrary an offer of performance may be made at the option of the debtor:

- 1. At any place appointed by the creditor; or,
- 2. Wherever the person to whom the offer ought to be made can be found; or,
- 3. If such person cannot with reasonable diligence be found within this state and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence

or place of business, if the same can with reasonable diligence be found within the state; or,

4. If this cannot be done, then at any place within this state.

§ 3804. **Must be made at the time fixed.** When an obligation fixes a time for its performance an offer of performance must be made at that time within reasonable hours and not before nor afterwards. § 339, Civil C.

§ 3805. **When time not fixed.** When an obligation does not fix a time for its performance, an offer of performance may be made at any time before the debtor upon a reasonable demand has refused to perform. § 340, Civil C.

§ 3806. **When may be made after due.** When delay in performance is capable of exact and entire compensation and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime. § 341, Civil C.

§ 3807. **Must be in good faith.** An offer of performance must be made in good faith and in such manner as is most likely under the circumstances to benefit the creditor. § 342, Civil C.

§ 3808. **Free from condition.** An offer of performance must be free from any conditions which the creditor is not bound on his part to perform. § 343, Civil C.

§ 3809. **Must be able and willing.** An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer. § 344, Civil C.

§ 3810. **Production unnecessary, if offer refused.** The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted. § 345, Civil C.

§ 3811. **Unmixed with other things.** A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty. § 346, Civil C.

§ 3812. **Contingent offer.** When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on his part, he may make his offer to depend upon the due performance of such condition. § 347, Civil C.

§ 3813. **Receipt obligatory.** A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation. § 348, Civil C.

§ 3814. **Obligation for payment extinguished by deposit.** An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor with some bank of deposit within this state of good repute and notice thereof is given to the creditor. § 349, Civil C.

§ 3815. **Objections waived.** All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer and which could be then obviated by him, are waived by the creditor, if not then stated. § 350, Civil C.

§ 3816. **When title to thing offered passes.** The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the time signifies his intention to that effect. § 351, Civil C.

§ 3817. **Deposit of thing offered.** The person offering a thing, other than money, by way of performance must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it, or until he has given reasonable notice

to the creditor that he will retain it no longer and if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

§ 853, Civil C.
am'd.

§ 3818. Obligation extinguished by offer and deposit. An obligation for the delivery of money, property or a conveyance of property is not discharged by an offer of performance nor any of its incidents affected, unless the thing offered, if money, is deposited as provided in section 3814, or, if other than money, is deposited for the creditor with some depositary of good repute at the place of performance and notice of such deposit in either case given to the creditor. After such deposit and notice the thing deposited shall be at the risk and expense of the creditor.

§ 854, Civil C.

§ 3819. Creditor gratuitous depositary. If anything is given to a creditor by way of performance which he refuses to accept as such, he is not bound to return it without demand; but if he retains it he is a gratuitous depositary thereof.

PREVENTION OF PERFORMANCE OR OFFER.

§ 855, Civil C.

§ 3820. When want of performance or offer excused. The want of performance of an obligation or of an offer of performance in whole or in part or any delay therein is excused by the following causes to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

2. When it is prevented or delayed by an irresistible superhuman cause or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it by any act of the creditor intended or naturally tending to have that effect done at or before the time at which such performance or offer may be made and not rescinded before that time.

§ 856, Civil C.

§ 3821. Debtor entitled to benefits. If the performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

§ 857, Civil C.

§ 3822. Ratable proportion of consideration. If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance according to the benefit which the creditor receives from the actual performance.

§ 858, Civil C.

§ 3823. What equivalent to offer and refusal. A refusal by a creditor to accept performance made before an offer thereof is equivalent to an offer and refusal, unless before performance is actually due he gives notice to the debtor of his willingness to accept it.

ACCORD AND SATISFACTION.

§ 859, Civil C.

§ 3824. Accord defined. An accord is an agreement to accept in extinction of an obligation something different from or less than that to which the person agreeing to accept is entitled.

§ 3825. **Full execution only extinguishes.** Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed. § 860, Civil C.

§ 3826. **Acceptance is satisfaction.** Acceptance by the creditor of the consideration of an accord extinguishes the obligation and is called satisfaction. § 861, Civil C.

§ 3827. **Part performance accepted extinguishes.** Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation. § 862, Civil C.

NOVATION.

§ 3828. **Defined.** Novation is the substitution of a new obligation for an existing one. § 863, Civil C.

§ 3829. **How made.** Novation is made: § 864, Civil C.

1. By the substitution of a new obligation between the same parties with intent to extinguish the old obligation.

2. By the substitution of a new debtor in the place of the old one with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one with intent to transfer the rights of the latter to the former.

§ 3830. **Made by contract.** Novation is made by contract and is subject to all the rules concerning contracts in general. § 865, Civil C.

§ 3831. **Rescinding acceptance.** When the obligation of a third person or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order or from fulfilling the obligation; or if at the time the obligation or order is received, such person is insolvent and this fact is unknown to the creditor; or if before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent. § 866, Civil C. am'd.

RELEASE.

§ 3832. **Extinguishes obligation.** An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration, or in writing, with or without new consideration. § 867, Civil C.

§ 3833. **Extends only to known claims.** A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor. § 868, Civil C.

§ 3834. **Releasing one does not release others.** A release of one of two or more joint debtors does not extinguish the obligations of any of the others unless they are mere guarantors; nor does it affect their right to contribution from him. § 869, Civil C.

CHAPTER 43.

CONTRACTS.

ARTICLE 1. — DEFINITION.

- § 870, CIVIL C. § 3835. **Defined.** A contract is an agreement to do or not to do a certain thing.
- § 871, CIVIL C. § 3836. **Requisites of.** It is essential to the existence of a contract that there should be:
1. Parties capable of contracting.
 2. Their consent.
 3. A lawful object; and,
 4. Sufficient cause or consideration.

ARTICLE 2. — PARTIES.

- § 872, CIVIL C. § 3837. **Who may make.** All persons are capable of contracting, except minors, persons of unsound mind and persons deprived of civil rights.
- § 873, CIVIL C. § 3838. **Minors, etc.** Minors and persons of unsound mind have only such capacity as is defined by chapter 2 of this code.
- § 874, CIVIL C. § 3839. **Possible to identify parties.** It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them.
- § 875, CIVIL C. § 3840. **Beneficiary may enforce.** A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.

ARTICLE 3. — CONSENT.

- § 876, CIVIL C. § 3841. **Requisites of consent.** The consent of the parties to a contract must be:
1. Free.
 2. Mutual; and,
 3. Communicated by each to the other.
- § 877, CIVIL C. § 3842. **Rescinded, if not free.** A consent which is not free is, nevertheless, not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.
- § 878, CIVIL C. § 3843. **What renders apparent consent not free.** An apparent consent is not real or free when obtained through:
1. Duress.
 2. Menace.
 3. Fraud.
 4. Undue influence; or,
 5. Mistake.
- § 879, CIVIL C. § 3844. **When deemed not free.** Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.
- § 880, CIVIL C. § 3845. **Duress.** Duress consists in:
1. Unlawful confinement of the person of the party or of the husband or wife of such party, or of an ancestor, descendant or adopted child of such party, husband or wife.

2. Unlawful detention of the property of any such person; or,
3. Confinement of such person, lawful in form, but fraudulently obtained or fraudulently made unjustly harassing or oppressive.

§ 3846. **Menace.** Menace consists in a threat:

§ 881, Civil C.

1. Of such duress as is specified in the first and third subdivisions of the last section.

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person.

§ 3847. **Fraud classified.** Fraud is either actual or constructive.

§ 882, Civil C.

§ 3848. **Actual fraud.** Actual fraud within the meaning of this chapter consists in any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto or to induce him to enter into the contract:

§ 883, Civil C.

1. The suggestion as a fact of that which is not true by one who does not believe it to be true.

2. The positive assertion in a manner not warranted by the information of the person making it of that which is not true, though he believes it to be true.

3. The suppression of that which is true by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

§ 3849. **Constructive fraud.** Constructive fraud consists:

§ 884, Civil C.

1. In any breach of duty which without an actually fraudulent intent gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent without respect to actual fraud.

§ 3850. **Actual, question of fact.** Actual fraud is always a question of fact.

§ 885, Civil C.

§ 3851. **Undue influence.** Undue influence consists:

§ 886, Civil C.

1. In the use, by one in whom a confidence is reposed by another or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

§ 3852. **Mistake classified.** Mistake may be either of fact or of law.

§ 887, Civil C.

§ 3853. **Fact.** Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

§ 888, Civil C.

1. An unconscious ignorance or forgetfulness of a fact past or present material to the contract; or,

2. Belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed.

§ 3854. **Law.** Mistake of law constitutes a mistake within the meaning of this chapter only when it arises from:

§ 889, Civil C.

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party of which the others are aware at the time of contracting, but which they do not rectify.

§ 890, CIVIL C.

§ 3855. Of foreign laws, fact. Mistake of foreign laws is a mistake of fact.

§ 891, CIVIL C.

§ 3856. Mutual consent defined. Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the article on interpretation they are to be deemed so to agree without regard to the fact.

§ 892, CIVIL C.

§ 3857. How communicated. Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication.

§ 893, CIVIL C.

§ 3858. Acceptance must comply with conditions. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

§ 894, CIVIL C.

§ 3859. When deemed fully communicated. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity to the last section.

§ 895, CIVIL C.

§ 3860. Acts which are an acceptance. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

§ 896, CIVIL C.

§ 3861. Acceptance must be absolute. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest and which will include the person accepting. A qualified acceptance is a new proposal.

§ 897, CIVIL C.

§ 3862. When proposal revoked. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

§ 898, CIVIL C.

§ 3863. How proposal revoked. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party in the manner prescribed by sections 3857 and 3859 before his acceptance has been communicated to the former.

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed the lapse of a reasonable time without communication of the acceptance.

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

§ 899, CIVIL C.

§ 3864. Subsequent consent. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

§ 900, CIVIL C.

§ 3865. Acceptance of benefit a consent to obligation. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it so far as the facts are known or ought to be known to the person accepting.

ARTICLE 4. — OBJECT OF A CONTRACT.

§ 3866. **Object of contract.** The object of a contract is the thing which it is agreed on the part of the party receiving the consideration to do or not to do. § 901, Civil C.

§ 3867. **Requisites of object.** The object of a contract must be lawful when the contract is made and possible and ascertainable by the time the contract is to be performed. § 902, Civil C.

§ 3868. **Possible defined.** Everything is deemed possible except that which is impossible in the nature of things. § 903, Civil C.

§ 3869. **Single unlawful object avoids contract.** When a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void. § 904, Civil C.

§ 3870. **Lawful object valid.** When a contract has several distinct objects, of which one at least is lawful and one at least is unlawful in whole or in part, the contract is void as to the latter and valid as to the rest. § 905, Civil C.

ARTICLE 5. — CONSIDERATION.

§ 3871. **Good consideration defined.** Any benefit conferred or agreed to be conferred upon the promiser by any other person to which the promiser is not lawfully entitled or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer as an inducement to the promiser, is a good consideration for a promise. § 906, Civil C.

§ 3872. **When legal or moral obligation good consideration.** An existing legal obligation resting upon the promiser or a moral obligation originating in some benefit conferred upon the promiser, or prejudice suffered by the promisee is also a good consideration for a promise to an extent corresponding with the extent of the obligation, but no further or otherwise. § 907, Civil C.

§ 3873. **Consideration must be lawful.** The consideration of a contract must be lawful within the meaning of section 3920. § 908, Civil C.

§ 3874. **Contract void when consideration unlawful.** If any part of a single consideration for one or more objects, or of several considerations for a single object is unlawful, the entire contract is void. § 909, Civil C.

§ 3875. **Consideration executed or executory.** A consideration may be executed or executory in whole or in part. In so far as it is executory it is subject to the provisions of article 4 of this chapter. § 910, Civil C.

§ 3876. **How executory consideration determined.** When a consideration is executory it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard. § 911, Civil C. am'd.

§ 3877. **Consideration undetermined. Reasonable worth.** When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party the consideration must be so much money as the object of the contract is reasonably worth. § 912, Civil C.

- § 913, Civil C. **§ 3878. Consideration not ascertainable. Contract void.** When a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.
- § 914, Civil C. **§ 3879. Exclusive method. Consideration not ascertainable. Provision void.** When a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void.
- § 914, Civil C. **§ 3880. Writing presumes consideration.** A written instrument is presumptive evidence of a consideration.
- § 914, Civil C. **§ 3881. Burden of proving want of.** The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

ARTICLE 6. — MANNER OF CREATING CONTRACTS.

- § 915, Civil C. **§ 3882. Contracts classified.** A contract is either express or implied.
- § 916, Civil C. **§ 3883. Express.** An express contract is one the terms of which are stated in words.
- § 917, Civil C. **§ 3884. Implied.** An implied contract is one the existence and terms of which are manifested by conduct.
- § 918, Civil C. **§ 3885. What contracts may be oral.** All contracts may be oral, except such as are specially required by statute to be in writing.
- § 919, Civil C. **§ 3886. When oral contract required to be in writing enforceable.** When a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing and acts upon such belief to his prejudice may enforce it against the fraudulent party.
- § 920, Civil C. **§ 3887. Contracts required to be in writing.** The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:
1. An agreement that by its terms is not to be performed within a year from the making thereof.
 2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 4629.
 3. An agreement made upon consideration of marriage, other than a mutual promise to marry.
 4. An agreement for the sale of goods, chattels, or things in action at a price not less than fifty dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made by auction an entry by the auctioneer in his sale book at the time of the sale of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made is a sufficient memorandum.
 5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

§ 3888. Written contract supersedes oral negotiations. § 921, Civil C.
The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

§ 3889. Takes effect on delivery. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent. § 922, Civil C.

§ 3890. Chapter on transfers applies. The provisions of the chapter on transfers in general concerning the delivery of grants, absolute and conditional, apply to all written contracts. § 923, Civil C.

§ 3891. How seal affixed. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written. § 924, Civil C.

§ 3892. Seals abolished. All distinctions between sealed and unsealed instruments are abolished. § 925, Civil C.

ARTICLE 7.—INTERPRETATION OF CONTRACTS.

§ 3893. Same rules for public and private. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code. § 926, Civil C.

§ 3894. Must be interpreted to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting so far as the same is ascertainable and lawful. § 927, Civil C.

§ 3895. Rules in this article to be applied. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied. § 928, Civil C.

§ 3896. Language governs if clear. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity. § 929, Civil C.

§ 3897. Intention ascertained from writing alone, if possible. When a contract is reduced to writing the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this article. § 930, Civil C.

§ 3898. Real intention to govern in cases of fraud, etc. When through fraud, mistake or accident a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous parts of the writing disregarded. § 931, Civil C.

§ 3899. Every part given effect. The whole of a contract is to be taken together so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others. § 932, Civil C.

§ 3900. Several contracts. Parts of one transaction. Taken together. Several contracts relating to the same matters between the same parties and made as parts of substantially one transaction are to be taken together. § 933, Civil C.

§ 3901. So interpreted as to carry it into effect. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect, if it can be done without violating the intention of the parties. § 934, Civil C.

§ 3902. Words to be understood in ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning, unless § 935, Civil C.

- used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.
- § 3903. **Technical words.** Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.
- § 3904. **What law governs.** A contract is to be interpreted according to the law and usage of the place where it is to be performed, or if it does not indicate a place of performance, according to the law and usage of the place where it is made.
- § 3905. **Explained by reference to circumstances.** A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.
- § 3906. **Extends no farther than parties intended to contract.** However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.
- § 3907. **As promiser believed promisee understood it.** If the terms of a promise are in any respect ambiguous or uncertain it must be interpreted in the sense in which the promiser believed at the time of making it that the promisee understood it.
- § 3908. **Clauses subordinate to general intent.** Particular clauses of a contract are subordinate to its general intent.
- § 3909. **Written and original control printed and copied.** When a contract is partly written and partly printed, or when part of it is written or printed under the special directions of the parties and with a special view to their intention and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form and if the two are absolutely repugnant the latter must be so far disregarded.
- § 3910. **Repugnancies reconciled.** Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause subordinate to the general intent and purposes of the whole contract.
- § 3911. **Inconsistent words rejected.** Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties are to be rejected.
- § 3912. **Uncertainty interpreted against party causing it. Presumption as to cause.** In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promiser is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.
- § 3913. **Reasonable stipulations implied.** Stipulations which are necessary to make a contract reasonable or conformable to usage are implied in respect to matters concerning which the contract manifests no contrary intention.
- § 3914. **Incidents, when and when not implied.** All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

§ 3915. Rules governing time of performance when not specified. If no time is specified for the performance of an act required to be performed a reasonable time is allowed. If the act is in its nature capable of being done instantly as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained. § 948, Civil C.

§ 3916. When time of the essence. Time is never considered as of the essence of a contract unless by its terms expressly so provided. § 949, Civil C.

§ 3917. When promise presumed joint and several. When all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several. § 950, Civil C.

§ 3918. Promise in singular by several presumed joint and several. A promise made in the singular number, but executed by several persons is presumed to be joint and several. § 951, Civil C.

§ 3919. Executed contract defined. An executed contract is one, the object of which is fully performed. All others are executory. § 952, Civil C.

ARTICLE 8.—UNLAWFUL CONTRACTS.

§ 3920. What is unlawful. That is not lawful which is: § 953, Civil C.

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

§ 3921. Certain contracts against the policy of the law. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law. § 954, Civil C.

§ 3922. Penalties and penal clauses void. Penalties imposed by contract for any nonperformance thereof are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses. § 955, Civil C.

§ 3923. Fixing damages for breach void. Every contract by which the amount of damages to be paid or other compensation to be made for a breach of an obligation is determined in anticipation thereof is to that extent void, except as expressly provided by the next section. § 956, Civil C.

§ 3924. Exception to last section. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when from the nature of the case it would be impracticable or extremely difficult to fix the actual damage. § 957, Civil C.

§ 3925. Restricting enforcement of rights void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. § 958, Civil C.

§ 3926. In restraint of business void. Every contract by which any one is restrained from exercising a lawful profession, trade § 959, Civil C.

or business of any kind, otherwise than as provided by the next two sections is to that extent void.

§ 960, Civil C. **§ 3927. Good will excepted.** One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or a part thereof, so long as the buyer or any person deriving title to the good will from him carries on a like business therein.

§ 961, Civil C. **§ 3928. Partners excepted.** Partners may upon or in anticipation of a dissolution of the partnership agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

§ 962, Civil C. **§ 3929. In restraint of marriage void.** Every contract in restraint of the marriage of any person, other than a minor, is void.

ARTICLE 9.—EXTINCTION OF CONTRACTS.

§ 963, Civil C. **§ 3930. How extinguished.** A contract may be extinguished in like manner with any other obligation and also in the manner prescribed by this article.

RESCISSION.

§ 964, Civil C. **§ 3931. Extinguished by rescission.** A contract is extinguished by its rescission.

§ 965, Civil C. **§ 3932. When rescission permitted.** A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him was given by mistake or obtained through duress, menace, fraud or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party.

2. If through the fault of the party as to whom he rescinds the consideration for his obligation fails in whole or in part.

3. If such consideration becomes entirely void from any cause.

4. If such consideration before it is rendered to him fails in a material respect from any cause; or,

5. By consent of all of the other parties.

§ 966, Civil C. **§ 3933. When permitted notwithstanding stipulation for compensation.** A stipulation that errors of description shall not avoid a contract or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, when such mistake is in a matter essential to the inducement of the contract and is not capable of exact and entire compensation.

§ 967, Civil C. **§ 3934. Rules governing.** Rescission when not effected by consent can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence or disability and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

ALTERATION AND CANCELLATION.

§ 3935. **How oral contract altered.** A contract not in writing may be altered in any respect by consent of the parties in writing without a new consideration and is extinguished thereby to the extent of the alteration. § 968, Civil C.

§ 3936. **How written contract altered.** A contract in writing may be altered by a contract in writing or by an executed oral agreement and not otherwise. § 969, Civil C.

§ 3937. **Destruction by consent extinguishes as to all consenting.** The destruction or cancellation of a written contract or of the signature of the parties liable thereon with intent to extinguish the obligation thereof, extinguishes it as to all of the parties consenting to the act. § 970, Civil C.

§ 3938. **Extinguished as to one and not all.** The intentional destruction, cancellation or material alteration of a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act. § 971, Civil C.

§ 3939. **Destruction of one duplicate not within last section.** When a contract is executed in duplicate an alteration or destruction of one copy while the other exists is not within the provisions of the last section. § 972, Civil C.

CHAPTER 44.

OBLIGATIONS IMPOSED BY LAW.

§ 3940. **To abstain from injuring another's person or property.** Every person is bound without contract to abstain from injuring the person or property of another or infringing upon any of his rights. § 973, Civil C.

§ 3941. **Damages for deceit.** One who willfully deceives another with intent to induce him to alter his position to his injury or risk is liable for any damage which he thereby suffers. § 974, Civil C.

§ 3942. **Deceit defined.** A deceit within the meaning of the last section is either: § 975, Civil C.

1. The suggestion as a fact of that which is not true by one who does not believe it to be true.

2. The assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true.

3. The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise made without any intention of performing.

§ 3943. **When intent to defraud every one misled presumed.** One who practices a deceit with intent to defraud the public or a particular class of persons is deemed to have intended to defraud every individual in that class who is actually misled by the deceit. § 976, Civil C.

- § 977, Civil C. **§ 3944. When thing obtained without consent must be restored.** One who obtains a thing without the consent of its owner or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.
- § 978, Civil C. **§ 3945. Without demand. Exception.** The restoration required by the last section must be made without demand: except when a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.
- § 979, Civil C. **§ 3946. Liability for willful acts and negligence.** Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully or by want of ordinary care, brought the injury upon himself. The extent of the liability in such cases is defined by articles 1 and 2 of chapter 94 on compensatory relief.
- § 980, Civil C. **§ 3947. Other obligations.** Other obligations are prescribed by the first forty-one chapters of this code.

CHAPTER 45.

SALE.

ARTICLE 1.—GENERAL PROVISIONS.

- § 981, Civil C. **§ 3948. Sale defined.** Sale is a contract by which for a pecuniary consideration called a price one transfers to another an interest in property.
- § 982, Civil C. **§ 3949. Subject of sale.** The subject of sale must be property the title to which can be immediately transferred from the seller to the buyer.

ARTICLE 2.—AGREEMENTS FOR SALE.

- § 983, Civil C. **§ 3950. Classified.** An agreement for sale is either:
1. An agreement to sell.
 2. An agreement to buy; or,
 3. A mutual agreement to sell and buy.
- § 984, Civil C. **§ 3951. Agreement to sell defined.** An agreement to sell is a contract by which one engages for a price to transfer to another the title to a certain thing.
- § 985, Civil C. **§ 3952. Agreement to buy.** An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.
- § 986, Civil C. **§ 3953. To sell and buy.** An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another who engages to accept the same from him and to pay a price therefor.

§ 3954. **What may be sold.** Any property which if in existence might be the subject of sale may be the subject of an agreement for a sale whether in existence or not. § 987, Civil C.

§ 3955. **Duty of seller of realty.** An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. § 988, Civil C.

§ 3956. **Duty on agreement to give usual covenants.** An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of seizin, quiet enjoyment, further assurance, general warranty and against incumbrances. § 989, Civil C.

§ 3957. **Form of covenants.** The covenants mentioned in the last section must be in substance as follows: § 990, Civil C.

The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will on demand execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

ARTICLE 3. — FORM OF THE CONTRACT.

§ 3958. **Statute of frauds. Personal property.** No sale of personal property or agreement to buy or sell it for a price of fifty dollars or more is valid unless: § 991, Civil C.

1. The agreement or some note or memorandum thereof is in writing and subscribed by the party to be charged or by his agent; or,

2. The buyer accepts and receives part of the things sold or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

3. The buyer at the time of the sale pays a part of the price.

§ 3959. **Agreement to manufacture not within last section.** An agreement to manufacture a thing from materials furnished by the manufacturer or by another person is not within the provisions of the last section. § 992, Civil C.

§ 3960. **Agreement for sale of realty invalid unless in writing.** No agreement for the sale of real property, or of an interest therein, is valid unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof. § 993, Civil C.

§ 3961. **Form of transfer.** The form of a transfer of real property is described by the chapter on such transfers. § 994, Civil C.

ARTICLE 4. — RIGHTS AND OBLIGATIONS OF THE SELLER. RIGHTS AND DUTIES BEFORE DELIVERING.

§ 3962. **Seller acts as depositary.** After personal property has been sold, and until the delivery is completed the seller has the

rights and obligations of a depositary for hire, except that he must keep the property without charge until the buyer has had a reasonable opportunity to remove it.

- § 996, Civil C. **§ 3963. Seller may rescind.** If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by chapter 84 on liens.

DELIVERY.

- § 997, Civil C. **§ 3964. Delivered reasonable time after demand.** One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand unless he has a lien thereon.
- § 998, Civil C. **§ 3965. Where deliverable.** Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell or if it is not then in existence, it is deliverable at the place where it is produced.
- § 999, Civil C. **§ 3966. Where brought for acceptance. Risk of transportation.** One who sells personal property must bring it to his own door or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.
- § 1000, Civil C. **§ 3967. Notice of option.** When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time his right of option is waived.
- § 1001, Civil C. **§ 3968. Buyer's directions govern sending.** If a seller agrees to send the thing sold to the buyer he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions or if in the absence of special directions he uses ordinary care in forwarding the thing it is at the risk of the buyer.
- § 1002, Civil C. **§ 3969. Delivery within reasonable hours.** The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

WARRANTY.

- § 1003, Civil C. **§ 3970. Defined.** A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future.
- § 1004, Civil C. **§ 3971. Not implied from mere sale.** Except as prescribed by this article a mere contract of sale or agreement to sell does not imply a warranty.
- § 1005, Civil C. **§ 3972. Sale of personalty warrants title.** One who sells or agrees to sell personal property as his own thereby warrants that he has a good and unincumbered title thereto.
- § 1006, Civil C. **§ 3973. Bulk equal to sample.** One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample.
- § 1007, Civil C. **§ 3974. Knows nothing to destroy inducement to buy.** One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the

transaction, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy.

§ 3975. **Not in existence, sound and merchantable.** One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care. § 1008, CIVIL C.

§ 3976. **Free from latent defects.** One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect not disclosed to the buyer, arising from the process of manufacture and also that neither he nor his agent in such manufacture has knowingly used improper materials therein. § 1009, CIVIL C.

§ 3977. **Fit for purpose.** One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose. § 1010, CIVIL C.

§ 3978. **Inaccessible, warranted sound and merchantable.** One who sells or agrees to sell merchandise inaccessible to the examination of the buyer thereby warrants that it is sound and merchantable. § 1011, CIVIL C.

§ 3979. **Trade-mark genuine.** One who sells or agrees to sell any article to which there is affixed or attached a trade-mark thereby warrants that mark to be genuine and lawfully used. § 1012, CIVIL C.

§ 3980. **Truth of marks of quantity or quality.** One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured or prepared thereby warrants the truth thereof. § 1013, CIVIL C.

§ 3981. **Validity of instrument.** One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act thereby warrants the instrument to be what it purports to be and to be binding according to its purport upon all the parties thereto; and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, when that is material, the extinction of its obligations, or its invalidity for any cause. § 1014, CIVIL C.

§ 3982. **Provisions sound and wholesome.** One who makes a business of selling provisions for domestic use warrants by a sale thereof to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome. § 1015, CIVIL C.

§ 3983. **Good will.** One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers. § 1016, CIVIL C.

§ 3984. **Judicial sale.** Upon a judicial sale the only warranty implied is that the seller does not know that the sale will not pass a good title to the property. § 1017, CIVIL C.

§ 3985. **Scope of general warranty.** A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware or which were then easily discernible by him without the exercise of peculiar skill, but it extends to all other defects. § 1018, CIVIL C.

ARTICLE 5. — RIGHTS AND OBLIGATIONS OF THE BUYER.

§ 3986. **To pay and remove in reasonable time.** A buyer must pay the price of the thing sold on its delivery and must take it away within a reasonable time after the seller offers to deliver it. § 1019, CIVIL C.

- § 1020, CIVIL C. **§ 3987. Right to inspect.** On an agreement for sale with warranty the buyer has a right to inspect the thing sold at a reasonable time before accepting it and may rescind the contract if the seller refuses to permit him to do so.
- § 1021, CIVIL C. **§ 3988. Rescission for breach of warranty.** The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

ARTICLE 6.—SALE BY AUCTION.

- § 1022, CIVIL C. **§ 3989. Defined.** A sale by auction is a sale by public outcry to the highest bidder on the spot.
- § 1023, CIVIL C. **§ 3990. When complete.** A sale by auction is complete when the auctioneer publicly announces by the fall of his hammer or in any other customary manner that the thing is sold.
- § 1024, CIVIL C. **§ 3991. Withdrawal of bid.** Until the announcement mentioned in the last section has been made any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.
- § 1025, CIVIL C. **§ 3992. Printed conditions govern.** When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.
- § 1026, CIVIL C. **§ 3993. Sale without reserve. Rights of bidder.** If at a sale by auction, the auctioneer having authority to do so, publicly announces that the sale will be without reserve or makes any announcement equivalent thereto the highest bidder in good faith has an absolute right to the completion of the sale to him and upon such a sale bids by the seller or any agents for him are void.
- § 1027, CIVIL C. **§ 3994. Employment of bidder-in a fraud.** The employment by a seller at a sale at auction without the knowledge of the buyer of any person to bid at the sale, without an intention on the part of such bidder to buy and on the part of the seller to enforce his bid, is a fraud upon the buyer which entitles him to rescind his purchase.
- § 1028, CIVIL C. **§ 3995. Auctioneer's entry binding.** When property is sold by auction an entry made by the auctioneer in his sale book at the time of the sale specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale and the name of the buyer binds both parties in the same manner as if made by themselves.

CHAPTER 46.

EXCHANGE.

§ 3996. **Defined.** Exchange is a contract by which the parties § 1029, CIVIL C.
mutually give or agree to give one thing for another, neither thing or
both things being money only.

§ 3997. **Governed by section 3958.** The provisions of section § 1030, CIVIL C.
3958 apply to all exchanges in which the value of the thing to be
given by either party is fifty dollars or more.

§ 3998. **Governed by chapter on sale.** The provisions of § 1031, CIVIL C.
the chapter on sale apply to exchanges. Each party has the rights
and obligations of a seller as to the thing which he gives and of a
buyer as to that which he takes,

§ 3999. **Money warranted genuine.** On an exchange of § 1032, CIVIL C.
money each party thereby warrants the genuineness of the money given
by him.

CHAPTER 47.

DEPOSIT.

ARTICLE 1.—DEPOSIT IN GENERAL.

NATURE AND CREATION OF DEPOSIT.

§ 4000. **Deposit classified.** A deposit may be voluntary or § 1033, CIVIL C.
involuntary; and for safe-keeping or for exchange.

§ 4001. **Voluntary.** A voluntary deposit is made by one giving § 1034, CIVIL C.
to another with his consent the possession of personal property
to keep for the benefit of the former or of a third party. The per-
son giving is called the depositor and the person receiving the
depository.

§ 4002. **Involuntary.** An involuntary deposit is made: § 1035, CIVIL C.

1. By the accidental leaving or placing of personal property in the
possession of any person without negligence on the part of its
owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot or like
extraordinary emergencies by the owner of personal property com-
mitting it out of necessity to the care of any person.

§ 4003. **Duty of depository under last section.** The per- § 1036, CIVIL C.
son with whom a thing is deposited in the manner described in the
last section is bound to take charge of it if able to do so.

§ 4004. **For keeping.** A deposit for keeping is one in which § 1037, CIVIL C.
the depository is bound to return the identical thing deposited.

§ 4005. **For exchange.** A deposit for exchange is one in § 1038, CIVIL C.
which the depository is only bound to return a thing corresponding
in kind to that which is deposited.

OBLIGATIONS OF THE DEPOSITARY.

- § 1039, Civil C. **§ 4006. Delivery on demand. Exceptions.** A depositary must deliver the thing to the person for whose benefit it was deposited on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law and has given the notice required by section 4008.
- § 1040, Civil C. **§ 4007. Demand prerequisite to delivery.** A depositary is not bound to deliver a thing deposited without demand even when the deposit is made for a specified time.
- § 1041, Civil C. **§ 4008. Place of delivery.** A depositary must deliver the thing deposited at his residence or place of business as may be most convenient for him.
- § 1042, Civil C. **§ 4009. Prompt notice of adverse claim.** A depositary must give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the same to him.
- § 1043, Civil C. **§ 4010. Notice of wrongful detention.** A depositary who believes that a thing deposited with him is wrongfully detained from its true owner may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it and sufficiently establish his right thereto and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice upon returning the thing to the depositor, or assuming in good faith a new obligation changing his position in respect to the thing to his prejudice.
- § 1044, Civil C. **§ 4011. Delivery to disagreeing owners.** If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

ARTICLE 2. — DEPOSIT FOR KEEPING.

GENERAL PROVISIONS.

- § 1045, Civil C. **§ 4012. Indemnity to depositary for damages.** A depositor must indemnify the depositary:
1. For all damage caused to him by the defects or vices of the thing deposited; and,
 2. For all expenses necessarily incurred by him about the thing other than such as are involved in the nature of the undertaking.
- § 1046, Civil C. **§ 4013. Care of animals.** A depositary of living animals must provide them with suitable food and shelter and treat them kindly.
- § 1047, Civil C. **§ 4014. May not use deposit.** A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter except in case of necessity.

§ 4015. Damages for wrongful use. A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used. § 1048, Civil C.

§ 4016. Sale if perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor. § 1049, Civil C.

§ 4017. When willfulness or gross negligence presumed. If a thing is lost or injured during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur. § 1050, Civil C.

§ 4018. Rules governing services by depositary. So far as any service is rendered by a depositary or required from him his duties and liabilities are prescribed by chapters 50, 51 and 52. § 1051, Civil C.

§ 4019. Measure of liability. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor or has reason to suppose the thing deposited to be worth. § 1052, Civil C.

GRATUITOUS DEPOSIT.

§ 4020. Defined. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited. § 1053, Civil C.

§ 4021. Involuntary, gratuitous. An involuntary deposit is gratuitous, the depositary being entitled to no reward. § 1054, Civil C.

§ 4022. Use slight care. A gratuitous depositary must use at least slight care for the preservation of the thing deposited. § 1055, Civil C.

§ 4023. When duties cease. The duties of a gratuitous depositary cease: § 1056, Civil C.

1. Upon his restoring the thing deposited to its owner; or,
2. Upon his giving reasonable notice to the owner to remove it, the owner failing to do so within a reasonable time. But an involuntary depositary under subdivision 2 of section 4002 cannot give such notice until the emergency that gave rise to the deposit is passed.

STORAGE.

§ 4024. Defined. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. § 1057, Civil C.

§ 4025. Must use ordinary care. A depositary for hire must use at least ordinary care for the preservation of the thing deposited. § 1058, Civil C.

§ 4026. Right to compensation. In the absence of a different agreement or usage a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week and to half a month's hire for the storage of any other property during any fraction of a half month. § 1059, Civil C.

- § 1060, Civil C. **§ 4027. Termination of deposit.** In the absence of an agreement as to the length of time during which a deposit is to continue it may be terminated by the depositor at any time and by the depositary upon reasonable notice.
- § 1061, Civil C. **§ 4028. Same. Payment for full time.** Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

ARTICLE 3.—INNKEEPER.

- § 1062, Civil C.
am'd. **§ 4029. Innkeeper's liability.** An innkeeper or keeper of a boarding house is liable for all losses of or injuries to personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner or by the act of some one whom he brought into the inn or boarding house.
- § 1063, Civil C. **§ 4030. How exempted from liability.** If an innkeeper or boarding house keeper keeps a fire proof safe and gives notice to a guest or boarder, either personally or by putting up a printed notice in a prominent place in the room occupied by the guests or boarders that he keeps such a safe and will not be liable for money, jewelry, documents or other articles of unusual value and small compass unless placed therein, he is not liable, except so far as his own acts contribute thereto for any loss of or injury to such article, if not deposited with him and not required by the guest or boarder for present use.

FINDING.

- § 1064, Civil C. **§ 4031. Finder, depositary for hire.** One who finds a thing lost is not bound to take charge of it; but if he does so, he is thenceforward a depositary for the owner with the rights and obligations of a depositary for hire.
- § 1065, Civil C. **§ 4032. Must notify owner.** If the finder of a thing knows or suspects who is the owner, he must with reasonable diligence give him notice of the finding; and if he fails to do so, he is liable in damages to the owner and has no claim to any reward offered by him for the recovery of the thing or to any compensation for his trouble or expenses.
- § 1066, Civil C. **§ 4033. May require proof of ownership.** The finder of a thing may in good faith before giving it up require reasonable proof of ownership from any person claiming it.
- § 1067, Civil C. **§ 4034. Compensation and reward.** The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation and for any other services necessarily performed by him about it and to a reasonable reward for keeping it.
- § 1068, Civil C. **§ 4035. Storing releases from liability.** The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character at a reasonable expense.
- § 1069, Civil C. **§ 4036. When finder may sell.** The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found,

refuses upon demand to pay the lawful charges of the finder in the following cases:

1. When the thing is in danger of perishing or of losing the greater part of its value; or,
2. When the lawful charges of the finder amount to two-thirds of its value.

§ 4037. **Manner of sale.** A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged. § 1070, Civil C.

§ 4038. **Claim exonerated by surrender.** The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof. § 1071, Civil C.

§ 4039. **No application to things abandoned.** The provisions of this article have no application to things which have been intentionally abandoned by their owners. § 1072, Civil C.

ARTICLE 4. — DEPOSIT FOR EXCHANGE.

§ 4040. **Title transferred by.** A deposit for exchange transfers to the depositary the title to the thing deposited and creates between him and the depositor the relation of debtor and creditor merely. § 1073, Civil C.

CHAPTER 48.

LOAN.

ARTICLE 1. — LOAN FOR USE.

§ 4041. **Defined.** A loan for use is a contract by which one gives to another the temporary possession and use of personal property and the latter agrees to return the same thing to him at a future time without reward for its use. § 1074, Civil C.

§ 4042. **Title and increase belong to lender.** A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender. § 1075, Civil C.

§ 4043. **Must use great care.** A borrower for use must use great care for the preservation in safety and in good condition of the thing lent. § 1076, Civil C. am'd.

§ 4044. **Treat animal with great kindness.** One who borrows a living animal for use must treat it with great kindness and provide everything necessary and suitable for it. § 1077, Civil C.

§ 4045. **Degree of skill.** A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess. § 1078, Civil C.

§ 4046. **Repair injuries.** A borrower for use must repair all deteriorations or injuries to the thing lent which are occasioned by his negligence, however slight. § 1079, Civil C.

§ 4047. **Use only for anticipated purposes.** The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending. § 1080, Civil C.

- § 1081, Civil C. **§ 4048. Must not lend without consent.** The borrower of a thing for use must not part with it to a third person without the consent of the lender.
- § 1082, Civil C. **§ 4049. Expenses during loan.** The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender who may, however, exonerate himself by surrendering the thing to the borrower.
- § 1083, Civil C. **§ 4050. Indemnity to borrower for defects.** The lender of a thing for use must indemnify the borrower for damages caused by defects or vices in it which he knew at the time of lending and concealed from the borrower.
- § 1084, Civil C. **§ 4051. Return may be required at any time.** The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if on the faith of such an agreement the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.
- §§ 1085, 1086, Civil C. **§ 4052. When to be returned.** If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired or the purpose has been accomplished. In other cases it need not be returned until demanded. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of the lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

ARTICLE 2.—LOAN FOR EXCHANGE.

- § 1087, Civil C. **§ 4053. Defined.** A loan for exchange is a contract by which one delivers personal property to another and the latter agrees to return to the lender a similar thing at a future time without reward for its use.
- § 1088, Civil C. **§ 4054. Same.** A loan which the borrower is allowed by the lender to treat as a loan for use or for exchange at his option is subject to all the provisions of this article.
- § 1089, Civil C. **§ 4055. Transfers title.** By a loan for exchange the title to the thing lent is transferred to the borrower and he must bear all its expenses and is entitled to all its increase.
- § 1090, Civil C. **§ 4056. Cannot require different performance.** A lender for exchange cannot require the borrower to fulfill his obligations at a time or in a manner different from that which was originally agreed upon.
- § 1091, Civil C. **§ 4057. Sections applicable.** Sections 4050 and 4052 apply to a loan for exchange.

ARTICLE 3.—LOAN OF MONEY.

- § 1092, Civil C. **§ 4058. Defined.** A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the article on loan for use.

§ 4059. **Repayment in current funds.** A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent. § 1093, Civil C.

§ 4060. **Loan presumes interest.** Whenever a loan of money is made it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing. § 1094, Civil C.

§ 4061. **Interest defined.** Interest is the compensation allowed for the use, or forbearance, or detention of money, or its equivalent. § 1095, Civil C.

§ 4062. **Rate deemed annual.** When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated it is to be deemed an annual rate. § 1096, Civil C.

§ 4063. **Legal rate seven per cent.** Interest for any legal indebtedness shall be at the rate of seven per cent per annum, unless a different rate is contracted for in writing and all contracts shall bear the same rate of interest after they become due as before, unless it clearly appears therefrom that such was not the intention of the parties. §§ 1, c. 184, 1890.
1, c. 131, 1893.

§ 4064. **Usury defined.** No person, firm, company or corporation shall directly or indirectly take, or receive, or agree to take or receive in money, goods or things in action or in any other way any greater sum or any greater value for the loan or forbearance of money, goods or things in action than twelve per cent per annum; and in the computation of interest the same shall not be compounded. Any violation of this section shall be deemed usury; provided, that any contract to pay interest not usurious on interest overdue shall not be deemed usury. §§ 2, c. 184, 1890.
2, c. 131, 1893.

§ 4065. **Interest taken in advance.** The interest which would become due at the end of the term for which a loan is made, not exceeding ninety days' interest in all, may be deducted from the loan in advance if the parties thus agree. § 1099, Civil C.
am'd.

§ 4066. **Penalty for usury.** The taking, receiving, reserving or charging a rate of interest greater than is allowed by section 4064, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it or which has been agreed to be paid thereon. In case the greater rate of interest has been paid the person by whom it has been paid, or his legal representatives, may recover back in an action for that purpose twice the amount of interest thus paid from the person taking or receiving the same; provided, that such action is commenced within two years from the time the usurious transaction occurred. §§ 1100, Civil C.
1, c. 207, 1887.
3, c. 131, 1893.
am'd.

§ 4067. **Judgments bear seven per cent.** Interest is payable on judgments recovered in the courts of this state at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form. § 1101, Civil C.

§ 4068. **Same rate before and after breach.** Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. § 1102, Civil C.

CHAPTER 49.

HIRING.

ARTICLE 1.—HIRING IN GENERAL.

- § 1103, Civil C. **§ 4069. Defined.** Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward and the latter agrees to return the same to the former at a future time.
- § 1104, Civil C. **§ 4070. Products belong to hirer.** The products of a thing hired during the hiring belong to the hirer.
- § 1105, Civil C. **§ 4071. Quiet possession.** An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring against all persons lawfully claiming the same.
- § 1106, Civil C. **§ 4072. Ordinary care.** The hirer of a thing must use ordinary care for its preservation in safety and in good condition.
- § 1107, Civil C. **§ 4073. Repair injuries.** The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.
- § 1108, Civil C. **§ 4074. Use only for purpose let.** When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does the latter may hold him responsible for its safety during such use in all events or may treat the contract as thereby rescinded.
- § 1109, Civil C. **§ 4075. When letter may terminate hiring.** The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:
1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
 2. When the hirer does not within a reasonable time after request make such repairs as he is bound to make.
- § 1110, Civil C. **§ 4076. When hirer may terminate.** The hirer of a thing may terminate the hiring before the end of the term agreed upon:
1. When the letter does not within a reasonable time after request fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,
 2. When the greater part of the thing hired or that part, which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.
- § 1111, Civil C. **§ 4077. When hiring terminated.** The hiring of a thing terminates:
1. At the end of the term agreed upon.
 2. By the mutual consent of the parties.
 3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,
 4. By the destruction of the thing hired.
- § 1112, Civil C. **§ 4078. When terminated by death.** If the hiring of a thing is terminable at the pleasure of one of the parties it is terminated by

notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

§ 4079. **Proportionate hire paid, when.** When the hiring of a thing is terminated before the time originally agreed upon the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal and of no benefit to him. § 1113, CIVIL C.

ARTICLE 2. — HIRING OF REAL PROPERTY.

§ 4080. **Obligations of lessor of dwelling.** The lessor of a building intended for the occupation of human beings must in the absence of an agreement to the contrary put it into a condition fit for such occupation and repair all subsequent dilapidations thereof, except that the lessee must repair all deteriorations or injuries thereto occasioned by his ordinary negligence. § 1114, CIVIL C.

§ 4081. **When lessee may repair or vacate.** If within a reasonable time after notice to the lessor of dilapidations which he ought to repair he neglects to do so the lessee may repair the same himself and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent or performance of other conditions. § 1115, CIVIL C.

§ 4082. **Hiring of realty presumed for one year.** A hiring of real property, other than lodgings, in places where there is no usage on the subject is presumed to be for one year from its commencement, unless otherwise expressed in the hiring. § 1116, CIVIL C.

§ 4083. **Of lodgings for rent term.** A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent the hiring is presumed to be monthly. § 1117, CIVIL C.

§ 4084. **When hiring presumed renewed.** If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from him the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year. § 1118, CIVIL C.

§ 4085. **Same when no term originally specified.** A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in the last section at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month. § 1119, CIVIL C.

§ 4086. **Rents, when payable.** When there is no contract or usage to the contrary the rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring. § 1120, CIVIL C.

§ 4087. **Notice of adverse proceedings.** Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same and also deliver to the landlord the notice, if § 1121, CIVIL C.

in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver it to him if in writing. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

§ 1122, Civil C.

§ 4088. Double letting of room prohibited. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon and every tenant in the building under the same landlord is relieved from all obligation to pay rent to him while such double letting of any room continues.

ARTICLE 3. — HIRING OF PERSONAL PROPERTY.

§ 1123, Civil C.

§ 4089. Obligations of letter of personalty. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

§ 1124, Civil C.

§ 4090. Hirer bears ordinary expenses. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

§ 1125, Civil C.

§ 4091. Rights when section 4089 not complied with. If a letter fails to fulfill his obligations as prescribed by section 4089, the hirer after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default and may recover such amount from him.

§ 1126, Civil C.

§ 4092. Return of thing hired. At the expiration of the term for which personal property is hired the hirer must return it to the letter at the place contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place at which it was at that time.

§ 1127, Civil C.

§ 4093. Charter party. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

CHAPTER 50.

SERVICE.

ARTICLE 1. — DEFINITION OF EMPLOYMENT.

§ 4094. **Employment defined.** The contract of employment § 1128, CIVIL C. is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person.

ARTICLE 2. — OBLIGATIONS OF THE EMPLOYER.

§ 4095. **Indemnity to employee.** An employer must indemnify § 1129, CIVIL C. his employee except as prescribed in the next section for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

§ 4096. **Ordinary risks. Co-employees.** An employer is not § 1130, CIVIL C. bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

§ 4097. **Employer's negligence.** An employer must in all § 1131, CIVIL C. cases indemnify his employee for losses caused by the former's want of ordinary care.

ARTICLE 3. — OBLIGATIONS OF THE EMPLOYEE.

§ 4098. **Obligations of gratuitous employee.** One who § 1132, CIVIL C. without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance he must use at least slight care and diligence therein.

§ 4099. **Same.** One who by his own special request induces § 1133, CIVIL C. another to intrust him with the performance of a service must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time.

§ 4100. **Same. Power of attorney.** A gratuitous employee § 1134, CIVIL C. who accepts a written power of attorney must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

§ 4101. **Duties of employee for reward.** One who for a good § 1135, CIVIL C. consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

§ 4102. **Employee for his own benefit.** One who is employed § 1136, CIVIL C. at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interests of the latter.

- § 1137, Civil C. **§ 4103. Contract for personal services. Two years.** A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on master and servant, cannot be enforced against the employee beyond the term of two years from the commencement of service under it, but if the employee voluntarily continues his services under it beyond that time the contract may be referred to as affording a presumptive measure of the compensation.
- § 1138, Civil C. **§ 4104. Must obey employer.** An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this and the two succeeding chapters, except when such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee, or in case of an emergency, which, according to the best information which the employee can with reasonable diligence obtain the employer did not contemplate, in which he cannot with reasonable diligence be consulted and in which non-compliance is judged by the employee in good faith and in the exercise of reasonable discretion to be absolutely necessary for the protection of the employer's interest. In all such cases the employee must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter.
- § 1139, Civil C. **§ 4105. Conform to usage.** An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.
- § 1140, Civil C. **§ 4106. Reasonable skill.** An employee is bound to exercise a reasonable degree of skill, unless his employer has notice before employing him of his want of skill.
- § 1141, Civil C. **§ 4107. Use all skill possessed.** An employee is bound to use such skill as he possesses so far as the same is required for the service specified.
- § 1142, Civil C. **§ 4108. What belongs to employer.** Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.
- § 1143, Civil C. **§ 4109. Account to employer.** An employee must on demand render to his employer just accounts of all his transactions in the course of his service as often as may be reasonable and must without demand give prompt notice to his employer of everything which he receives for his account.
- § 1144, Civil C. **§ 4110. Not to deliver without demand.** An employee, who receives anything on account of his employer in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand in any mode involving greater risk than its retention by the employee himself.
- § 1145, Civil C. **§ 4111. Employer's business to receive preference.** An employee who has any business to transact on his own account similar to that intrusted to him by his employer must always give the latter the preference. If intrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or other things being equal, according to the order in which they were committed to him.

§ 4112. **Ordinary care in selecting substitute.** An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal. § 1146, CIVIL C.

§ 4113. **Liability for culpable negligence.** An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him if the service is not gratuitous for the value of such services only as are properly rendered. § 1147, CIVIL C.

§ 4114. **When surviving employee to act.** When service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise. § 1148, CIVIL C.

§ 4115. **Confidential employments.** The obligations peculiar to confidential employments are defined in chapters 58 and 59. § 1149, CIVIL C.

ARTICLE 4.—TERMINATION OF EMPLOYMENT.

§ 4116. **What terminates employment.** Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of: § 1150, CIVIL C.

1. The death of the employer; or,
2. His legal incapacity to contract.

Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employee; or,
4. By his legal incapacity to act as such.

§ 4117. **Continuance in certain cases.** An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment. § 1151, CIVIL C.

§ 4118. **At will on notice.** An employment, having no specified term, may be terminated at the will of either party on notice to the other, except when otherwise provided by this chapter. § 1152, CIVIL C.

§ 4119. **For willful breach of duty or incapacity.** An employment, even for a specified term, may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment or in case of his habitual neglect of his duty or continued incapacity to perform it. § 1153, CIVIL C.

§ 4120. **For breach of employer's obligations.** Any employment, even for a specified term, may be terminated by the employee at any time in case of any willful or permanent breach of the obligations of his employer to him as an employee. § 1154, CIVIL C.

§ 4121. **Compensation when dismissed for cause.** An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract. § 1155, CIVIL C.

- § 1156, CIVIL C. **§ 4122. Compensation when employee quits for cause.** An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

CHAPTER 51.

PARTICULAR EMPLOYMENTS.

ARTICLE 1. — MASTER AND SERVANT.

- § 1157, CIVIL C. **§ 4123. Servant defined.** A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.
- § 1158, CIVIL C. **§ 4124. Hiring presumed to be for wage-term.** A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.
- § 1159, CIVIL C. **§ 4125. Month presumed.** In the absence of any agreement or custom as to the rate or value of wages the term of service or the time of payment, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.
- § 1160, CIVIL C. **§ 4126. Renewal for same term and wages presumed.** When after the expiration of an agreement respecting the wages and the term of service the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.
- § 1161, CIVIL C. **§ 4127. Time belongs to whom.** The entire time of a domestic servant belongs to the master and the time of other servants, to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in a day.
- § 1162, CIVIL C. **§ 4128. Must account to master.** A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account without demand; but he is not bound without orders from his master to send anything to him through another person.
- § 1163, CIVIL C. **§ 4129. Causes for discharge.** A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:
1. If he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or,
 2. If, being employed about the person of the master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that if the master had known or contemplated it, he would not have so employed him.

ARTICLE 2. — AGENTS.

§ 4130. **Must not exceed authority.** An agent must not § 1164, Civil C.
exceed the limits of his actual authority as defined by the chapters
on agency.

§ 4131. **Keep principal informed.** An agent must use ordi- § 1165, Civil C.
nary diligence to keep his principal informed of his acts in the course
of the agency.

§ 4132. **Duty as collector of negotiable instrument.** An § 1166, Civil C.
agent employed to collect a negotiable instrument must collect it
promptly and take all measures necessary to charge the parties thereto
in case of its dishonor, and, if it is a bill of exchange, must present it
for acceptance with reasonable diligence.

§ 4133. **Responsibility of subagent.** A mere agent of an § 1167, Civil C.
agent is not responsible as such to the principal of the latter.

ARTICLE 3. — FACTORS.

§ 4134. **Defined.** A factor is an agent who in the pursuit of an § 1168, Civil C.
independent calling is employed by another to sell property for him
and is vested by the latter with the possession or control of the prop-
erty or authorized to receive payment therefor from the purchaser.

§ 4135. **Must obey instructions. Exception.** A factor § 1169, Civil C.
must obey the instructions of his principal to the same extent as any
other employee, notwithstanding any advances he may have made to
his principal upon the property consigned to him except that, if the
principal forbids him to sell at the market price, he may nevertheless
sell for his reimbursement after giving to his principal reasonable
notice of his intention to do so and of the time and place of sale and
proceeding in all respects as a pledgee.

§ 4136. **Give usual credit.** A factor may sell property con- § 1170, Civil C.
signed to him on such credit as is usual, but, having once agreed with
the purchaser upon the terms of credit, may not extend it.

§ 4137. **Liability under guarantee commission.** A factor § 1171, Civil C.
who charges his principal with a guarantee commission upon a sale
thereby assumes absolutely to pay the price when it falls due as if it
was a debt of his own and not as a mere guarantor for the purchaser;
but he does not thereby assume any additional responsibility for the
safety of his remittance of the proceeds.

§ 4138. **How agreement to guarantee released.** A factor § 1172, Civil C.
who receives property for sale under a general agreement or usage to
guarantee the sale or the remittance of the proceeds cannot relieve
himself from responsibility therefor without the consent of his
principal.

ARTICLE 4. — SHIPMASTERS.

§ 4139. **Appointed by owner.** The master of a ship is ap- § 1173, Civil C.
pointed by the owner and holds during his pleasure. The word
“ship” as used in this code shall be construed to mean any boat,
vessel or structure fitted for navigation.

§ 4140. **When master to be on board.** The master of a ship § 1174, Civil C.
is bound to be always on board when entering or leaving port. The
word “port” as used in this code shall be construed to mean any place

- on a navigable river or lake where a vessel lands to receive or put off freight or passengers or for any other purpose and when a vessel has made a landing it is said to be in port.
- § 1175, CIVIL C. **§ 4141. Taking pilot.** Before leaving a port the master of a ship must take a pilot on board and the navigation of the vessel devolves on him.
- § 1176, CIVIL C. **§ 4142. Power over seamen.** The master of a ship may enforce the obedience of the mate and crew to his lawful commands by confinement and other reasonable corporal punishment not prohibited by law, being responsible for the abuse of his power.
- § 1177, CIVIL C. **§ 4143. Power over passengers.** The master of a ship may confine any person on board during a voyage for willful disobedience to his lawful command.
- § 1178, CIVIL C. **§ 4144. May take private supplies.** If during a voyage the ship's supplies fail the master with the advice of the officers may compel persons who have private supplies on board to surrender them for the common want on payment of their value or giving security therefor.
- § 1179, CIVIL C. **§ 4145. When may abandon ship.** The master of a ship must not abandon it during the voyage without the advice of the other officers.
- § 1180, CIVIL C. **§ 4146. On abandonment must take away valuables.** The master of a ship upon abandoning it must carry with him so far as it is in his power the money and the most valuable of the goods on board under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control he is exonerated from liability.
- § 1181, CIVIL C. **§ 4147. Cannot trade on his own account.** The master of a ship who engages for a common profit on the cargo must not trade on his own account and if he does he must account to his employer for all profits thus made by him.
- § 1182, CIVIL C. **§ 4148. Great care and diligence.** The master of a ship must use great care and diligence in the performance of his duties and is responsible for all damage occasioned by his negligence, however slight.
- § 1183, CIVIL C. **§ 4149. Chapter 61 applies.** The authority and liability of the master of a ship as an agent for the owners of the ship and cargo are regulated by chapter 61.

ARTICLE 5.—MATES AND SEAMEN.

- § 1184, CIVIL C. **§ 4150. Mate defined.** The mate of a ship is the officer next in command to the master.
- § 1185, CIVIL C. **§ 4151. Seamen defined.** All persons employed in the navigation of a ship or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this code.
- § 1186, CIVIL C. **§ 4152. Engaged by master. Cause for discharge.** The mate and seamen of a ship are engaged by the master and may be discharged by him at any period of the voyage for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.
- § 1187, CIVIL C. **§ 4153. Unseaworthy vessel.** A mate or seaman is not bound to go on a voyage in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness he may refuse to proceed until a proper survey has been had.

§ 4154. Agreement to abandon wages or lien void. A § 1188, CIVIL C.
seaman cannot by reason of any agreement be deprived of his lien upon the ship or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship or to abandon any right he may have or obtain in the nature of salvage is void.

§ 4155. When special agreement of seamen is binding. No § 1189, CIVIL C.
special agreement entered into by a seaman can impair any of his rights or add to any of his obligations as defined by law, unless he fully understands the effect of the agreement and receives a fair compensation therefor.

§ 4156. When wages due. Except as hereinafter provided § 1190, CIVIL C.
the wages of seamen are due when and so far only as freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

§ 4157. When wages begin. The right of a mate or seaman § 1191, CIVIL C.
to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

§ 4158. Wages when voyage broken up. When a voyage § 1192, CIVIL C.
is broken up before departure of the ship, the seamen must be paid for the time they have served and may retain for their indemnity such advances as they have received.

§ 4159. Full wages when wrongfully discharged. When § 1193, CIVIL C.
a mate or seaman is wrongfully discharged or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him and he may thereupon recover his full wages.

§ 4160. Wages after loss or wreck. In case of loss or § 1194, CIVIL C.
wreck of the ship a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores.

§ 4161. Certificate of master, evidence. A certificate from § 1195, CIVIL C.
the master or chief surviving officer of a ship to the effect that a seaman exerted himself to the utmost to save the ship, cargo and stores is presumptive evidence of the fact.

§ 4162. Wages when disabled without fault. When a § 1196, CIVIL C.
mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage or by being wrongfully discharged, or by a capture of the ship he is entitled to wages notwithstanding.

§ 4163. Expenses of sickness borne by ship. If a mate § 1197, CIVIL C.
or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him with suitable medical advice, medicine, attendance and other provision for his wants must be borne by the ship until the close of the voyage.

§ 4164. Wages to time of death. If a mate or seaman dies § 1198, CIVIL C.
during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

§ 4165. Desertion, etc., forfeits wages. Desertion of the ship § 1199, CIVIL C.
without cause, or a justifiable discharge by the master during the voyage for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship forfeits all wages due for the voyage to a mate or seaman thus in fault.

- § 1200, CIVIL C. **§ 4166. Cannot ship goods.** A mate or seaman may not under any pretext ship goods on his own account without permission from the master.
- § 1201, CIVIL C. **§ 4167. Embezzlement or injury made good.** If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a seaman, the offender, or if it is not known which is the offender, all those of whom negligence or fault may be presumed must make good the loss.
- § 1202, CIVIL C. **§ 4168. Further regulations.** The shipment of officers and seamen and their rights and duties are further regulated by law.

ARTICLE 6. — SHIP'S MANAGERS.

- § 1203, CIVIL C. **§ 4169. Defined.** The general agent for the owners in respect to the care of a ship and freight is called the manager; if he is a part owner he is also called the managing owner.
- § 1204, CIVIL C. **§ 4170. Duties of.** Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of the ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate and crew and supplies of provisions and stores.
- § 1205, CIVIL C. **§ 4171. Managing owner.** A managing owner is presumed to have no right to compensation for his own services.

CHAPTER 52.

SERVICE WITHOUT EMPLOYMENT.

- § 1206, CIVIL C. **§ 4172. No compensation. Expenses allowed.** One who officiously and without the consent of the real or apparent owner of a thing takes it into his possession for the purpose of rendering a service about it must complete such service and use ordinary care, diligence and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner and must account to the owner for the residue.
- § 1207, CIVIL C. **§ 4173. Salvage.** Any person other than the master, mate or a seaman thereof who rescues a ship, her appurtenances or cargo from danger is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has lien for such claim which is regulated by chapters 72 and 85.

CHAPTER 53.

CARRIAGE IN GENERAL.

§ 4174. **Contract for defined.** The contract of carriage is a contract for the conveyance of property, persons or messages from one place to another. § 1208, Civil C.

§ 4175. **Classified.** Carriage is either: § 1209, Civil C.

1. Inland; or,
2. Marine.

§ 4176. **Classes defined.** Carriers upon the ocean, upon arms of the sea, upon the great lakes or such other navigable waters or rivers as are within the admiralty jurisdiction of the United States are marine carriers. All others are inland carriers. § 1210, Civil C.

§ 4177. **Carriers by sea.** Rights and duties peculiar to carriers by sea are defined by acts of congress. § 1211, Civil C.

§ 4178. **Carriers without reward.** Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by the following chapters on carriage. § 1212, Civil C.

§ 4179. **Same. Must complete carriage.** A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage. § 1213, Civil C.

CHAPTER 54.

CARRIAGE OF PERSONS.

ARTICLE 1.—GRATUITOUS CARRIAGE OF PERSONS.

§ 4180. **Must use ordinary care.** A carrier of persons without reward must use ordinary care and diligence for their safe carriage. § 1214, Civil C.

ARTICLE 2.—CARRIAGE FOR REWARD.

§ 4181. **Utmost care and diligence.** A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose and must exercise to that end a reasonable degree of skill. § 1215, Civil C.

§ 4182. **Must use safe vehicles.** A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put and is not excused for default in this respect by any degree of care. § 1216, Civil C.

§ 4183. **Must not overload.** A carrier of persons for reward must not overcrowd or overload his vehicle. § 1217, Civil C.

§ 4184. **Treatment of passengers.** A carrier of persons for reward must give to passengers all such accommodations as are usual and are reasonable, must treat them with civility and give them a reasonable degree of attention. § 1218, Civil C.

§ 1219, Civil C. **§ 4185. Must travel at reasonable speed.** A carrier of persons for reward must travel at a reasonable rate of speed and without any unreasonable delay or deviation from his proper route.

CHAPTER 55.

CARRIAGE OF PROPERTY.

ARTICLE 1.—GENERAL DEFINITIONS.

§ 1220, Civil C. **§ 4186. Freight, freightage, consignor and consignee defined.** Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor and the person to whom it is to be delivered is called the consignee.

ARTICLE 2.—OBLIGATIONS OF THE CARRIER.

§ 1221, Civil C. **§ 4187. Ordinary care for reward; without reward, slight.** A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

§ 1222, Civil C. **§ 4188. Must comply with directions.** A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

§ 1223, Civil C. **§ 4189. Conflicting directions.** When the directions of a consignor and consignee are conflicting the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

§ 1224, Civil C. **§ 4190. Storage by marine carrier. Deviation.** A marine carrier must not stow freight upon deck during the voyage, except when it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

§ 1225, Civil C. **§ 4191. Manner of delivery.** A carrier of property must deliver it to the consignee at the place to which it is addressed in the manner usual at that place.

§ 1226, Civil C. **§ 4192. Place of delivery, when no usage.** If there is no usage to the contrary at the place of delivery freight must be delivered as follows:

1. If carried upon a railway owned and managed by the carrier it may be delivered at the station nearest the place to which it is addressed.

2. If carried by sea from a foreign country it may be delivered at the wharf where the ship moors within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases it must be delivered to the consignee or his agent personally, if either can with reasonable diligence be found.

§ 4193. Notice to consignee. When carrier becomes warehouseman. If for any reason a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival and keep the same in safety upon his responsibility as a warehouseman until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee is unknown to the carrier, he may give the notice by letter dropped in the nearest post office. § 1227, Civil C.

§ 4194. Liability terminated. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage on account of the consignee and giving notice thereof to him. § 1228, Civil C.

§ 4195. When unclaimed property may be sold. Whenever any trunk, carpetbag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company or any other common carrier in the course of his or its business as common carrier shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed and the owner or person to whom the same is consigned cannot be found upon diligent inquiry or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction after giving the owner or consignee fifteen days' notice of the time and place of sale through the post office and by advertising in a newspaper published in the county where such sale is made and out of the proceeds of such sale to pay all legal charges on such article and the amount over, if any, shall be paid to the owner or consignee upon demand. § 1, c. 51, 1879.

§ 4196. When perishable property may be sold. Perishable property which has been transported to its destination and the owner or consignee notified of its arrival, or being notified, refuses or neglects to receive the same and pay the legal charges thereon, or if upon diligent inquiry the consignee cannot be found, such carrier may in the exercise of a reasonable discretion sell the same at public or private sale without advertising and the proceeds after deducting the freight and charges and expenses of sale shall be paid to the owner or consignee upon demand. § 2, c. 51, 1879.

§ 4197. Applies to hotel keepers. The provisions of the last two sections shall apply to hotel keepers and warehousemen. § 3, c. 51, 1879.

ARTICLE 3.—BILL OF LADING.

§ 4198. Defined. A bill of lading is an instrument in writing signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. § 1229, Civil C.

§ 4199. Negotiable. All the title to the freight which the first holder of a bill of lading had when he received it passes to every subsequent indorsee thereof in good faith and for value in the § 1230, Civil C.

ordinary course of business with like effect and in like manner as in the case of a bill of exchange.

§ 1231, Civil C. § 4200. **When delivery transfers.** When a bill of lading is made to bearer or in equivalent terms a simple transfer thereof by delivery conveys the same title as an indorsement.

§ 1232, Civil C. § 4201. **Obligations of carrier not altered.** A bill of lading does not alter the rights or obligation of the carrier as defined in this chapter unless it is plainly inconsistent therewith.

§ 1233, Civil C. § 4202. **Carrier must give sets of bills, on demand.** A carrier must subscribe and deliver to the consignor on demand any reasonable number of bills of lading of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so the consignor may take the freight from him and recover from him besides all damages thereby occasioned.

§ 1234, Civil C. § 4203. **Carrier exonerated by delivering freight to holder.** A carrier is exonerated from liability for freight by delivery thereof in good faith to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

§ 1235, Civil C. § 4204. **When surrender required.** When a carrier has given a bill of lading or other instrument substantially equivalent thereto, he may require its surrender or a reasonable indemnity against claims thereon before delivering the freight.

ARTICLE 4. — FREIGHTAGE.

§ 1236, Civil C. § 4205. **In advance. Exception.** A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

§ 1237, Civil C. § 4206. **Consignor liable for freightage. Exception.** The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

§ 1238, Civil C. § 4207. **When consignee liable.** The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it.

§ 1239, Civil C. § 4208. **No freightage on increase.** No freightage can be charged upon the natural increase of freight.

§ 1240, Civil C. § 4209. **Apportioned. Payment accordingly.** If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier the carrier is entitled to payment according to the apportionment for so much as he delivers.

§ 1241, Civil C. § 4210. **Part accepted. Freightage apportioned.** If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

§ 1242, Civil C. § 4211. **According to distance. At place short of destination. Qualification.** If a consignee voluntarily receives freight at a place short of the one appointed for delivery the carrier is entitled to a just proportion of the freightage according to distance. If the carrier, being ready and willing, offers to complete the transit he is entitled to the full freightage. If he does not thus offer completion

and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

§ 4212. **No extra freightage for carrying further.** If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver it on the demand of the consignee at the place and time of its arrival. § 1243, Civil C.

§ 4213. **Lien for freightage.** A carrier has a lien for freightage which is regulated by chapters 72, 84 and 85 of this code. § 1244, Civil C.

ARTICLE 5. — GENERAL AVERAGE.

§ 4214. **Jettison and general average.** A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard or otherwise sacrifice any or all of the cargo or appurtenances of the ship: Throwing property overboard for such purpose is called jettison and the loss incurred thereby is called a general average loss. § 1245, Civil C.

§ 4215. **Jettison begins with most bulky freight.** A jettison must begin with the most bulky and least valuable articles so far as possible. § 1246, Civil C.

§ 4216. **Jettison ordered only by master. Exception.** A jettison can be made only by authority of the master of a ship, except in case of his disability or of an overruling necessity, when it may be made by any other person. § 1247, Civil C.

§ 4217. **How loss by jettison apportioned.** The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage and cargo for the benefit of which the sacrifice is made as well as by the owner of the thing sacrificed. § 1248, Civil C.

§ 4218. **Loss by jettison. Adjustment.** The proportions in which a general average loss is to be borne must be ascertained by an adjustment in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of a voyage, if valid there, is valid everywhere. § 1249, Civil C.

§ 4219. **Values of ship, etc., how estimated.** In estimating values for the purpose of a general average the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery and the cargo as at the time and place of its discharge; adding in each case the amount made good by contribution. § 1250, Civil C.

§ 4220. **When deck stowage entitled to contribution.** The owner of things stowed on deck in case of their jettison is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage. § 1251, Civil C.

§ 4221. **These rules applicable to every sacrifice.** The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship or expense necessarily incurred for the preservation of the ship and cargo from extraordinary perils. § 1252, Civil C.

CHAPTER 56.

CARRIAGE OF MESSAGES.

- § 1253, Civil C. **§ 4222. Delivery.** A carrier of messages for reward must deliver them at the place to which they are addressed or to the persons for whom they are intended.
- § 1254, Civil C. **§ 4223. Great care. By telegraph, utmost diligence.** A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein.

CHAPTER 57.

COMMON CARRIERS.

ARTICLE 1. — COMMON CARRIERS IN GENERAL.

- § 1255, Civil C. **§ 4224. Defined.** Every one who offers to the public to carry persons, property or messages is a common carrier of whatever he thus offers to carry.
- § 1256, Civil C. **§ 4225. Must accept and carry.** A common carrier must, if able to do so, accept and carry whatever is offered to him at a reasonable time and place of a kind that he undertakes or is accustomed to carry.
- § 1258, Civil C. **§ 4226. Preference to United States and state.** A common carrier must always give a preference in time and may give a preference in price to the United States and to this state.
- § 1259, Civil C. **§ 4227. Must start when and where.** A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements or in order to connect with carriers on other lines of travel.
- § 1260, Civil C. **§ 4228. Compensation. Payment refused.** A common carrier is entitled to a reasonable compensation and no more which he may require to be paid in advance. If payment thereof is refused he may refuse to carry.
- § 1261, Civil C. **§ 4229. Obligations limited only by contract.** The obligation of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.
- § 1262, Civil C. **§ 4230. Exoneration by agreement limited.** A common carrier cannot be exonerated by any agreement made in anticipation thereof from liability for the gross negligence, fraud or willful wrong of himself or his servants.
- § 1263, Civil C. **§ 4231. Carrier's right to modify obligations restricted.** A passenger, consignor or consignee by accepting a ticket, bill of lading or written contract for carriage with a knowledge of its terms assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations, contained in such instrument can only be manifested by his signature to the same.

ARTICLE 2.—COMMON CARRIERS OF PERSONS.

§ 4232. **Carriage of luggage.** A common carrier of persons, § 1264, Civil C. unless his vehicle is fitted for the reception of passengers exclusively, must receive and carry a reasonable amount of luggage for each passenger without any charge except for an excess of weight over one hundred pounds to a passenger.

§ 4233. **Luggage defined.** Luggage may consist of any articles intended for the use of a passenger while traveling or for his personal equipment. § 1265, Civil C.

§ 4234. **Liability for luggage.** The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property. § 1266, Civil C.

§ 4235. **When luggage delivered. When at passenger's risk.** A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs; except that when luggage is transported by rail it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported it is carried at their risk. § 1267, Civil C.

§ 4236. **Must provide vehicles.** A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time. § 1268, Civil C.

§ 4237. **Must provide seats.** A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows. § 1269, Civil C.

§ 4238. **May make rules.** A common carrier of persons may make rules for the conduct of his business and may require passengers to conform to them if they are lawful, public, uniform in their application and reasonable. § 1270, Civil C.

§ 4239. **When fare demandable.** A common carrier may demand the fare of passengers either at starting or at any subsequent time. § 1271, Civil C.

§ 4240. **Ejection of passengers, how and where.** A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible and at any usual stopping place or near some dwelling house. After having ejected the passenger a carrier has no right to require the payment of any part of his fare. §§ 1272, 1273, Civil C.

§ 4241. **Lien on luggage.** A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the chapters on liens. § 1274, Civil C.

ARTICLE 3.—COMMON CARRIERS OF PROPERTY.

§ 4242. **Inland carrier's liability. Exception.** Unless the consignor accompanies the freight and retains exclusive control thereof an inland common carrier of property is liable from the time

that he accepts until he relieves himself from liability pursuant to sections 4068 to 4072 for the loss or injury thereof from any cause whatever except:

1. An inherent defect, vice or weakness or a spontaneous action of the property itself.
2. The act of a public enemy of the United States or of this state.
3. The act of the law; or,
4. Any irresistible superhuman cause.

§ 1276, Civil C. **§ 4243. Foregoing exceptions limited.** A common carrier is liable even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

§ 1277, Civil C. **§ 4244. When liable for delay.** A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

§§ 1278, 1279, Civil C. **§ 4245. Marine carrier's liability.** A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire. The liability of a common carrier by sea is further regulated by acts of congress.

§ 1280, Civil C. **§ 4246. Perils of sea defined.** Perils of the sea are from:

1. Storms and waves.
2. Rocks, shoals and rapids.
3. Other obstacles though of human origin.
4. Changes of climate.
5. The confinement necessary at sea.
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

§ 1281, Civil C. **§ 4247. Valuables. Liability limited. Exceptions.** A common carrier of gold, silver, platina or precious stones or of imitations thereof in a manufactured or unmanufactured state, of time-pieces of any description, of negotiable paper or other valuable writings, of pictures, glass or chinaware, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight.

§ 1282, Civil C. **§ 4248. Exonerated by delivery to communicating carrier.** If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected with those who thus carry and his liability ceases upon making such delivery.

§ 1283, Civil C. **§ 4249. How first carrier exonerated when freight lost.** If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

§ 1284, Civil C. **§ 4250. Services other than carriage and delivery.** In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the chapters on deposit and service.

ARTICLE 4.—COMMON CARRIERS OF MESSAGES.

§ 4251. **Order of transmission of telegraph messages.** A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order: § 1285, Civil C.

1. Messages from public agents of the United States, or of this state, on public business.

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

3. Messages giving information relating to the sickness or death of any person.

4. Other messages, in the order in which they were received.

§ 4252. **Messages other than telegraph.** A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he received them, except messages from agents of the United States or of this state on public business to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received. § 1286, Civil C.

§ 4253. **Damages for postponing messages.** Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto. § 1287, Civil C.

CHAPTER 58.

TRUSTS IN GENERAL.

ARTICLE 1.—NATURE AND CREATION OF A TRUST.

§ 4254. **Classified.** A trust is either: § 1288, Civil C.

1. Voluntary; or,

2. Involuntary.

§ 4255. **Voluntary.** A voluntary trust is an obligation arising out of personal confidence reposed in, and voluntarily accepted by one for the benefit of another. § 1289, Civil C.

§ 4256. **Involuntary.** An involuntary trust is one which is created by operation of law. § 1290, Civil C.

§ 4257. **Trustor, trustee, beneficiary defined.** The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary. § 1291, Civil C.

§ 4258. **Constructive trust.** Every one who voluntarily assumes a relation of personal confidence with another, is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but as to all persons, of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he by such confidence obtains any control. § 1292, Civil C.

- § 1293, Civil C. **§ 4259. For what purpose created.** A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the chapters on uses and trusts and on transfers.
- § 1294, Civil C. **§ 4260. How created as to trustor and beneficiary.** Subject to the provisions of section 3385 a voluntary trust is created as to the trustor and beneficiary by any words or acts of the trustor, indicating with reasonable certainty:
1. An intention on the part of the trustor to create a trust; and,
 2. The subject, purpose and beneficiary of the trust.
- § 1295, Civil C. **§ 4261. How as to trustee.** Subject to the provisions of section 3385, a voluntary trust is created as to the trustee by any words or acts of his, indicating with reasonable certainty:
1. His acceptance of the trust or his acknowledgment, made upon sufficient consideration, of its existence; and,
 2. The subject, purpose and beneficiary of the trust.
- § 1296, Civil C. **§ 4262. Trustee by wrongful detention.** One who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner.
- § 1297, Civil C. **§ 4263. Trustee by fraud, etc.** One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust or other wrongful act is, unless he has some other and better right thereto, an involuntary trustee of the thing gained for the benefit of the person who would otherwise have had it.

ARTICLE 2.—OBLIGATIONS OF TRUSTEES.

- § 1298, Civil C. **§ 4264. Highest good faith to beneficiary.** In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.
- § 1299, Civil C. **§ 4265. Use of property for trustee's profit prohibited.** A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust in any manner.
- § 1300, Civil C. **§ 4266. Transactions when trustee's interest adverse to beneficiary prohibited. Exceptions.** Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:
1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee and of all other facts concerning the transaction which might affect his own decision and without the use of any influence on the part of the trustee, permits him to do so.
 2. When the beneficiary not having power to contract, the district court upon the like information of the facts, grants the like permission; or,
 3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves and the district court for the latter in the manner above prescribed.

§ 4267. **Use of influence for advantage prohibited.** A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary. § 1301, Civil C.

§ 4268. **Undertaking adverse trust prohibited.** No trustee so long as he remains in the trust may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust without the consent of the latter. § 1302, Civil C.

§ 4269. **Adverse interest acquired.** If a trustee acquires any interest or becomes charged with any duty adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof and may be at once removed. § 1303, Civil C.

§ 4270. **Violation of preceding sections a fraud.** Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust. § 1304, Civil C.

§ 4271. **Presumption against trustee.** All transactions between a trustee and his beneficiary during the existence of the trust or while the influence acquired by the trustee remains by which he obtains any advantage from his beneficiary are presumed to be entered into by the latter without sufficient consideration and under undue influence. § 1305, Civil C.

§ 4272. **Liability for mingling property.** A trustee who willfully and unnecessarily mingles the trust property with his own so as to constitute himself in appearance its absolute owner is liable for its safety in all events. § 1306, Civil C.

§ 4273. **Liability for unlawful use.** A trustee who uses or disposes of the trust property contrary to section 4265 may, at the option of the beneficiary, be required to account for all profits so made or to pay the value of its use and, if he has disposed thereof, to replace it with its fruits or to account for its proceeds with interest. § 1307, Civil C.

§ 4274. **Liability for unauthorized use.** A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error. § 1308, Civil C.

§ 4275. **Liability for co-trustees consenting.** A trustee is responsible for the wrongful acts of a co-trustee to which he consented or which by his negligence he enabled the latter to commit, but for no others. § 1309, Civil C.

ARTICLE 3. — OBLIGATIONS OF THIRD PERSONS.

§ 4276. **When transferee involuntary trustee.** Every one to whom property is transferred in violation of a trust holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration. § 1310, Civil C.

§ 4277. **Trustee's misapplication no prejudice to good faith.** One who actually and in good faith transfers any money or other property to a trustee as such is not bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must at their peril see to the proper application of money or other property paid or delivered by them. § 1311, Civil C.

CHAPTER 59.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE 1.—NATURE AND CREATION OF THE TRUST.

- § 1312, CIVIL C. **§ 4278. Scope of chapter.** The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians as such.
- § 1313, CIVIL C. **§ 4279. By mutual consent, enforceable before rescission.** The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.
- § 1314, CIVIL C. **§ 4280. When court trustor.** When a trustee is appointed by a court or public officer as such, such court or officer is the trustor within the meaning of the last section.
- § 1315, CIVIL C. **§ 4281. Where object, etc., expressed.** The nature, extent and object of a trust are expressed in the declaration of trust.
- § 1316, CIVIL C. **§ 4282. What deemed part of declaration of trust.** All declarations of a trustor to his trustees in relation to the trust before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing all previous declarations by the same trustor are merged therein.

ARTICLE 2.—OBLIGATIONS OF TRUSTEES.

- § 1317, CIVIL C. **§ 4283. Must follow directions. Exception.** A trustee must fulfill the purpose of the trust as declared at its creation and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested in the same manner and to the same extent as an employee.
- § 1318, CIVIL C. **§ 4284. Ordinary care and diligence required.** A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.
- § 1319, CIVIL C. **§ 4285. Duty as to appointment of successor.** If a trustee procures or assents to his discharge from his office before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.
- § 1320, CIVIL C. **§ 4286. Investment of trust money.** A trustee must invest money received by him under the trust as fast as he collects a sufficient amount in such manner as to afford reasonable security and interest for the same.
- § 1321, CIVIL C. **§ 4287. Liability for failure.** If the trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely and compound interest if it is willful.
- § 1322, CIVIL C. **§ 4288. Cannot enforce claims purchased in contemplation of appointment.** A trustee cannot enforce any claim against

the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed by any competent court to charge to the trust property what he has in good faith paid for the claim upon discharging the same.

ARTICLE 3.—POWERS OF TRUSTEES.

§ 4289. **Authority of trustee.** A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of a general agent bind his principal. § 1323, CIVIL C.

§ 4290. **All co-trustees must act.** When there are several co-trustees all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides. § 1324, CIVIL C.

§ 4291. **Discretionary power controlled by court.** A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust. § 1325, CIVIL C.

ARTICLE 4.—RIGHTS OF TRUSTEES.

§ 4292. **Payment of expenses incurred.** A trustee is entitled to the payment out of the trust property of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures if they were productive of actual benefit to the estate. § 1326, CIVIL C.

§ 4293. **Compensation.** When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. § 1327, CIVIL C.

§ 4294. **Involuntary trustee excluded.** An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article. § 1328, CIVIL C.

ARTICLE 5.—TERMINATION OF THE TRUST.

§ 4295. **How trust extinguished.** A trust is extinguished by the entire fulfillment of its object or by such object becoming impossible or unlawful. § 1329, CIVIL C.

§ 4296. **Trust not revocable. Exception.** A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor and in that case the power must be strictly pursued. § 1330, CIVIL C.

§ 4297. **How office vacated.** The office of a trustee is vacated: § 1331, CIVIL C.

1. By his death; or,

2. By his discharge.

§ 4298. **Discharge of trustee.** A trustee can be discharged from his trust only as follows: § 1332, CIVIL C.

1. By the extinction of the trust.
2. By the completion of his duties under the trust.
3. By such means as may be prescribed by the declaration of trust.
4. By the consent of the beneficiary if he has capacity to contract.
5. By the judgment of a competent tribunal in a direct proceeding for that purpose that he is of unsound mind; or,
6. By the district court.

§ 1333, Civil C. **§ 4299. Removal by court.** The district court may remove any trustee who has violated or is unfit to execute the trust.

ARTICLE 6. — SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

§ 1334, Civil C. **§ 4300. Court may fill vacancies.** The district court may appoint a trustee whenever there is a vacancy and the declaration of trust does not provide a practicable method of appointment.

§ 1335, Civil C. **§ 4301. Trust survives to co-trustees.** On the death, renunciation or discharge of one of several co-trustees the trust survives to the others.

§ 1336, Civil C. **§ 4302. When court may appoint trustee.** When a trust exists without any appointed trustee, or when all the trustees renounce, die or are discharged the district court of the county or judicial subdivision where the trust property, or some portion thereof, is situated must appoint another trustee and direct the execution of the trust. The court may in its discretion appoint the original number or any less number of trustees.

CHAPTER 60.

AGENCY.

ARTICLE 1. — DEFINITION OF AGENCY.

§ 1337, Civil C. **§ 4303. Defined.** An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

§ 1338, Civil C. **§ 4304. Who may appoint and who be agent.** Any person having capacity to contract may appoint an agent and any person may be an agent.

§ 1339, Civil C. **§ 4305. Special and general agent defined.** An agent for a particular act or transaction is called a special agent. All others are general agents.

§ 1340, Civil C. **§ 4306. Agency classified.** An agency is either actual or ostensible.

§ 1341, Civil C. **§ 4307. Actual.** An agency is actual when the agent is really employed by the principal.

§ 1342, Civil C. **§ 4308. Ostensible.** An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE 2. — AUTHORITY OF AGENTS.

§ 4309. **Extent of authority.** An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention. § 1343, Civil C.

§ 4310. **Acts done by or to agent.** Every act which according to this code may be done by or to any person may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. § 1344, Civil C.

§ 4311. **Agent's authority limited.** An agent can never have authority, either actual or ostensible, to do an act which is and is known or suspected by the person with whom he deals to be a fraud upon the principal. § 1345, Civil C.

§ 4312. **How agency created.** An agency may be created and an authority may be conferred by a precedent authorization or a subsequent ratification. § 1346, Civil C.

§ 4313. **No consideration necessary.** A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. § 1347, Civil C.

§ 4314. **Form of authorization.** An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing. § 1348, Civil C.

§ 4315. **How ratification made.** A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, when an oral authorization would suffice, by accepting or retaining the benefit of the act with notice thereof. § 1349, Civil C.

§ 4316. **Part ratified, all ratified.** Ratification of part of an indivisible transaction is a ratification of the whole. § 1350, Civil C.

§ 4317. **Ratification, when valid.** A ratification is not valid, unless at the time of ratifying the act done the principal has power to confer authority for such an act. § 1351, Civil C.

§ 4318. **Retroactive ratification limited.** No unauthorized act can be made valid retroactively to the prejudice of third persons without their consent. § 1352, Civil C.

§ 4319. **Rescission of ratification.** A ratification may be rescinded when made without such consent as is required in a contract or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise. § 1353, Civil C.

§ 4320. **Authority.** An agent has such authority as the principal actually or ostensibly confers upon him. § 1354, Civil C.

§ 4321. **Actual authority.** Actual authority is such as a principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe himself to possess. § 1355, Civil C.

§ 4322. **Ostensible authority.** Ostensible authority is such as the principal intentionally or by want of ordinary care causes or allows a third person to believe the agent to possess. § 1356, Civil C.

§ 4323. **Has authority defined by law. Exception.** Every agent has actually such authority as is defined by this and the succeeding chapter, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority. § 1357, Civil C.

- § 1358, Civil C. **§ 4324. Authority to do necessary acts; make representations.** An agent has authority:
1. To do everything necessary or proper and usual in the ordinary course of business for effecting the purpose of his agency; and,
 2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.
- § 1359, Civil C. **§ 4325. When agent may disobey instructions.** An agent has power to disobey instructions in dealing with the subject of the agency in cases, when it is clearly for the interest of his principal that he should do so and there is not time to communicate with the principal.
- § 1360, Civil C. **§ 4326. Authority limited to specific terms.** When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.
- § 1361, Civil C. **§ 4327. General authority limited.** An authority expressed in general terms, however broad, does not authorize an agent:
1. To act in his own name unless it is the usual course of business to do so.
 2. To define the scope of his agency; or,
 3. To do any act which a trustee is forbidden to do by article 2 of chapter 58.
- § 1362, Civil C. **§ 4328. May warrant title to personalty.** An authority to sell personal property includes authority to warrant the title of the principal and the quality and quantity of the property.
- § 1363, Civil C. **§ 4329. Give usual covenants of warranty.** An authority to sell and convey real property includes authority to give the usual covenants of warranty.
- § 1364, Civil C. **§ 4330. Receive price.** A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.
- § 1365, Civil C. **§ 4331. Special agent may on delivery.** A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE 3. — MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

- § 1366, Civil C. **§ 4332. Rights and liabilities of agent accrue to principal.** An agent represents his principal for all purposes within the scope of his actual or ostensible authority and all the rights and liabilities which would accrue to the agent from the transactions within such limit, if they had been entered into on his own account, accrue to the principal.
- § 1367, Civil C. **§ 4333. When incomplete execution binding.** A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.
- § 1368, Civil C. **§ 4334. When notice to one notice to both.** As against a principal both principal and agent are deemed to have notice of whatever either has notice of and ought in good faith and the exercise of ordinary care and diligence to communicate to the other.

§ 4335. Authorized acts bind when authority exceeded. § 1369, Civil C.
When an agent exceeds his authority his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

§ 4336. When ostensible authority binding. A principal § 1370, Civil C.
is bound by acts of his agent under a merely ostensible authority to those persons only, who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith thereof.

§ 4337. When exclusive credit to agent binds principal. § 1371, Civil C.
If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith before receiving notice of the creditor's election to hold him responsible.

§ 4338. Set-off against agent. One who deals with an agent § 1372, Civil C.
without knowing or having reason to believe that the agent acts as such in the transaction may set-off against any claim of the principal arising out of the same all claims which he might have set-off against the agent before notice of the agency.

§ 4339. Instrument within scope of authority binding. § 1373, Civil C.
Any instrument within the scope of his authority by which an agent intends to bind his principal does bind him, if such intent is plainly inferable from the instrument itself.

§ 4340. Principal responsible for agent's negligence. § 1374, Civil C.
Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business; and for his willful omission to fulfill the obligations of the principal.

§ 4341. Principal's responsibility limited. A principal is § 1375, Civil C.
responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE 4. — OBLIGATIONS OF AGENTS TO THIRD PERSONS.

§ 4342. Agent warrants authority. One who assumes to act § 1376, Civil C.
as an agent thereby warrants to all who deal with him in that capacity that he has the authority which he assumes.

§ 4343. When agent liable as principal. One who assumes § 1377, Civil C.
to act as an agent is responsible to third persons as a principal for his acts in the course of his agency in any of the following cases and in no others:

1. When with his consent credit is given to him personally in a transaction.

2. When he enters into a written contract in the name of his principal without believing in good faith that he has authority to do so; or,

3. When his acts are wrongful in their nature.

§ 4344. Surrender of property adversely claimed. If an § 1378, Civil C.
agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must on demand surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he

has made to his principal in good faith on account of the same; and is responsible therefor if after notice from the owner, he delivers it to his principal.

§ 1379, Civil C. **§ 4345. This article subject to chapter 2.** The provisions of this article are subject to the provisions of chapter 2 of this code.

ARTICLE 5.—DELEGATION OF AGENCY.

§ 1380, Civil C. **§ 4346. When agent cannot delegate powers.** An agent unless specially forbidden by his principal to do so can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical.
2. When it is such as the agent cannot himself and the subagent can lawfully perform.
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

§ 1381, Civil C. **§ 4347. Wrongful delegation makes agent principal.** If an agent employs a subagent without authority, the former is a principal and the latter his agent and the principal of the former has no connection with the latter.

§ 1382, Civil C. **§ 4348. Rightful subagent principal's agent.** A subagent lawfully appointed represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent.

ARTICLE 6.—TERMINATION OF AGENCY.

§ 1383, Civil C. **§ 4349. How terminated.** An agency is terminated as to every person having notice thereof by:

1. The expiration of its term.
2. The extinction of its subject.
3. The death of the agent.
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

§ 1384, Civil C. **§ 4350. Not coupled with interest, how terminated.** Unless the power of an agent is coupled with an interest in the subject of the agency it is terminated as to every person having notice thereof by:

1. Its revocation by the principal.
2. His death; or,
3. His incapacity to contract.

CHAPTER 61.

PARTICULAR AGENCIES.

ARTICLE 1. — AUCTIONEERS.

§ 4351. **Authority from seller.** An auctioneer in the absence of special authorization or usage to the contrary has authority from the seller only as follows: § 1385, CIVIL C.

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as are usually sold on credit at auction.
3. To warrant in like manner with other agents to sell according to section 4328.

4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold upon payment of the price.
6. To collect the price; and,
7. To do whatever else is necessary or proper and usual in the ordinary course of business for effecting these purposes.

§ 4352. **Authority from bidder.** An auctioneer has authority from a bidder at the auction as well as from the seller to bind both by a memorandum of the contract as prescribed in the chapter on sale. § 1386, CIVIL C.

ARTICLE 2. — FACTORS.

§ 4353. **Defined.** A factor is an agent who is employed to buy or sell property in his own name and who is intrusted by his principal with the possession thereof as defined in section 4134. § 1387, CIVIL C.

§ 4354. **Authority.** In addition to the authority of agents in general a factor has actual authority from his principal, unless specially restricted: § 1388, CIVIL C.

1. To insure property consigned to him uninsured.
2. To sell on credit anything intrusted to him for sale except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage or barter the same; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

§ 4355. **Ostensible authority.** A factor has ostensible authority to deal with the property of his principal as his own in transactions with persons not having notice of the actual ownership. § 1389, CIVIL C.

ARTICLE 3. — SHIPMASTERS AND PILOTS.

§ 4356. **General agent of owner.** The master of a ship is a general agent for its owner in all matters concerning the same. § 1390, CIVIL C.

§ 4357. **Has authority to borrow.** The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay. § 1391, CIVIL C.

§ 4358. **Agent for owner of cargo.** The master of a ship during a voyage is a general agent for each of the owners of the cargo and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same. § 1392, CIVIL C.

- § 1393, Civil C. **§ 4359. Authority to make contracts binding owner.** The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage and in a foreign port may enter into a charter party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.
- § 1394, Civil C. **§ 4360. Authority to hypothecate.** The master of a ship may hypothecate the ship, freightage and cargo in the cases prescribed by the chapters on bottomry and respondentia and in no others.
- § 1395, Civil C. **§ 4361. Authority to sell ship.** When a ship, whether foreign or domestic, is seriously injured or the voyage is otherwise broken up beyond the possibility of pursuing it, the master in case of necessity may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners and await their instructions.
- § 1396, Civil C. **§ 4362. Authority to sell cargo.** The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination and the sale is otherwise absolutely necessary.
- § 1397, Civil C. **§ 4363. Authority to pay ransom.** The master of a ship in case of its capture may engage to pay a ransom for it in money or in part of the cargo and his engagement will bind the ship, freightage and cargo.
- § 1398, Civil C. **§ 4364. Authority ceases on abandonment to insurers.** The power of the master of a ship to bind its owner or the owners of the cargo ceases upon the abandonment of the ship and freightage to insurers.
- § 1399, Civil C. **§ 4365. Master's personal liability.** Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.
- 1400, Civil C. **§ 4366. Liable for negligence of crew.** The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship.
- § 1401, Civil C. **§ 4367. When for negligence of pilot.** The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot whether he employs him or not, he is responsible to third persons.

ARTICLE 4.—SHIP'S MANAGERS.

- § 1402, Civil C. **§ 4368. Authority to contract and settle.** A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter parties or make contracts for carriage and to settle for freightage and to adjust averages.
- § 1403, Civil C. **§ 4369. Authority limited.** Without special authority a ship's manager cannot borrow money or give up the lien for freightage or purchase a cargo or bind the owners of the ship to an insurance.

CHAPTER 62.

PARTNERSHIP IN GENERAL.

ARTICLE 1. — WHAT CONSTITUTES A PARTNERSHIP.

§ 4370. **Partnership defined.** Partnership is the association § 1404, CIVIL C. of two or more persons for the purpose of carrying on business together and dividing its profits between them.

§ 4371. **Ship owners not partners.** Part owners of a ship do § 1405, CIVIL C. not by simply using it in joint enterprise become partners as to the ship.

§ 4372. **Formed only by consent.** A partnership can be § 1406, CIVIL C. formed only by the consent of all the parties thereto and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE 2. — PARTNERSHIP PROPERTY.

§ 4373. **Defined.** The property of a partnership consists of all § 1407, CIVIL C. that is contributed to the common stock at the formation of the partnership and all that is subsequently acquired thereby.

§ 4374. **Extent of member's interest.** The interest of each § 1408, CIVIL C. member of a partnership extends to every portion of its property.

§ 4375. **Shares in profit or loss presumed equal.** In the § 1409, CIVIL C. absence of an agreement on the subject the shares of partners in the profits or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

§ 4376. **Loss divided same as profits.** An agreement to § 1410, CIVIL C. divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

§ 4377. **Lien on property for payment of debts.** Each § 1411, CIVIL C. member of a partnership may require its property to be applied to the discharge of its debts and has a lien upon the shares of the other partners for this purpose and for the payment of the general balance, if any, due to him.

§ 4378. **What presumed partnership property.** Property, § 1412, CIVIL C. whether real or personal, acquired with partnership funds is presumed to be partnership property.

ARTICLE 3. — MUTUAL OBLIGATIONS OF PARTNERS.

§ 4379. **Partners trustees.** The relations of partners are con- § 1413, CIVIL C. fidential. They are trustees for each other within the meaning of chapter 58 of this code. Their obligations as such trustees are defined by that chapter.

§ 4380. **Highest good faith required.** In all proceedings § 1414, CIVIL C. connected with the formation, conduct, dissolution and liquidation of the partnership every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

- § 1415, Civil C. **§ 4381. Each member must account to partnership.** Each member of a partnership must account to it for everything that he receives on account thereof and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.
- § 1416, Civil C. **§ 4382. No compensation.** A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE 4.—RENUNCIATION OF PARTNERSHIP.

- § 1417, Civil C. **§ 4383. Renunciation with notice exonerates.** A partner may exonerate himself from all future liability to a third person on account of the partnership by renouncing in good faith all participation in its future profits and giving notice to such third person and to his own copartners that he has made such renunciation and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.
- § 1418, Civil C. **§ 4384. Cannot claim profits thereafter.** After a partner has given notice of his renunciation of the partnership he cannot claim any of its subsequent profits and his copartners may proceed to dissolve the partnership.

CHAPTER 63.

GENERAL PARTNERSHIP.

ARTICLE 1.—WHAT IS A GENERAL PARTNERSHIP.

- § 1419, Civil C. **§ 4385. Defined.** Every partnership that is not formed in accordance with the law concerning special partnership and every special partnership, so far only as the general partners are concerned, is a general partnership.

ARTICLE 2.—POWERS AND AUTHORITY OF PARTNERS.

- § 1420, Civil C. **§ 4386. Majority governs.** Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.
- § 1421, Civil C. **§ 4387. Each partner general agent.** Every general partner is agent for the partnership in the transaction of its business and has authority to do whatever is necessary to carry on such business in the ordinary manner and for this purpose may bind his copartners by an agreement in writing.
- § 1422, Civil C. **§ 4388. Authority limited.** A partner as such has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him or are incapable of acting:
1. To make an assignment of the partnership property, or any portion thereof, to a creditor or to a third person in trust for the benefit of a creditor or of all creditors.
 2. To dispose of the good will of the business.

3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise.

4. To do any act which would make it impossible to carry on the ordinary business of the partnership.

5. To confess a judgment.

6. To submit a partnership claim to arbitration; or,

7. To do any other act not within the scope of the preceding section.

§ 4389. **Effect of bad faith.** A partner is not bound by any act of a copartner in bad faith toward him, though within the scope of a partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act. § 1423, Civil C.

ARTICLE 3.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 4390. **Profits belong to firm.** All profits made by a general partner in the course of any business usually carried on by the partnership belong to the firm. § 1424, Civil C.

§ 4391. **Partner cannot have adverse interest.** A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership or which prevents him from giving to such business all the attention which would be advantageous to it. § 1425, Civil C.

§ 4392. **May engage in separate business.** A partner may engage in any separate business, except as otherwise provided by the last two sections. § 1426, Civil C.

§ 4393. **When must account for profits.** A general partner, transacting business contrary to the provisions of this article, may be required by any copartner to account to the partnership for the profits of such business. § 1427, Civil C.

ARTICLE 4.—LIABILITY OF PARTNERS.

§ 4394. **Liable to third persons.** Every general partner is liable to third persons for all the obligations of the partnership jointly with his copartners. § 1428, Civil C.

§ 4395. **Liability defined by chapter 60.** The liability of general partners for each other's acts is defined by chapter 60 of this code. § 1429, Civil C.

§ 4396. **Ostensible partner.** Any one permitting himself to be represented as a partner, general or special is liable as such to third persons to whom such representation is communicated, who on the faith thereof give credit to the partnership. § 1430, Civil C.

§ 4397. **Otherwise only partner in fact liable.** No one is liable as a partner who is not such in fact, except as provided by the last section. § 1431, Civil C.

ARTICLE 5.—TERMINATION OF PARTNERSHIP.

§ 4398. **Duration of partnership.** If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law. § 1432, Civil C.

- § 1433, Civil C. **§ 4399. Causes dissolving.** A general partnership is dissolved as to all the partners:
1. By lapse of the time prescribed by agreement for its duration.
 2. By the expressed will of any partner if there is no such agreement.
 3. By the death of a partner.
 4. By the transfer to a person not a partner of the interest of any partner in the partnership property.
 5. By war or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,
 6. By a judgment of dissolution.
- § 1434, Civil C. **§ 4400. Partial dissolution.** A general partnership may be dissolved as to himself only by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as to entitle him to a judgment of dissolution.
- § 1435, Civil C. **§ 4401. Judgment of dissolution.** A general partner is entitled to a judgment of dissolution:
1. When he or another partner becomes legally incapable of contracting.
 2. When another partner fails to perform his duties under the agreement of partnership or is guilty of serious misconduct; or,
 3. When the business of the partnership can be carried on only at a permanent loss.
- § 1436, Civil C. **§ 4402. Liability until notice given.** The liability of a general partner for the acts of his copartners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership at the time of its dissolution had a place of business; to the extent in either case to which such persons part with value in good faith and in the belief that such partner is still a member of the firm.
- § 1437, Civil C. **§ 4403. When change of name sufficient notice.** A change of the partnership name, which plainly indicates the withdrawal of a partner is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication is not notice of the withdrawal of any partner.

ARTICLE 6. — LIQUIDATION.

- § 1438, Civil C. **§ 4404. Authority after dissolution.** After the dissolution of a partnership the powers and authority of the partners are such only as are prescribed by this article.
- § 1439, Civil C. **§ 4405. Who may act in liquidation.** Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.
- § 1440, Civil C. **§ 4406. Who may not act.** If the liquidation of a partnership is committed by consent of all the partners to one or more of them, the others have no right to act therein; but their acts are valid

in favor of persons parting with value in good faith upon the credit thereof.

§ 4407. **Authority of partner liquidating.** A partner § 1441, Civil C.
authorized to act in liquidation may collect, compromise or release
any debts due to the partnership, pay or compromise any claims
against it, and dispose of the partnership property.

§ 4408. **Same.** A partner authorized to act in liquidation may § 1442, Civil C.
indorse in the name of the firm promissory notes or other obligations
held by the partnership for the purpose of collecting the same, but
he cannot create any new obligation in its name, or revive a debt
against the firm by an acknowledgment, when an action thereon is
barred under the provisions of the code of civil procedure.

§ 4409. **Surviving partner's authority.** On the death of a § 1442, Civil C.
partner the surviving partners succeed to all the partnership property,
whether real or personal, in trust for the purposes of liquidation, even
though the deceased was appointed by agreement sole liquidator; and
the interest of the deceased in the ultimate distribution of the part-
nership assets passes to those who succeed to his other personal
property.

ARTICLE 7.—OF THE USE OF FICTITIOUS NAMES.

§ 4410. **Fictitious names. Service. Publication.** Except § 1443, Civil C.
as otherwise provided in the next section, every partnership
transacting business in this state under a fictitious name, or
a designation not showing the names of the persons inter-
ested as partners in such business, must file with the clerk of
the district court of the county or subdivision in which its principal
place of business is situated a certificate, stating the names in full of
all the members of such partnership and their places of residence,
and publish the same once a week for four successive weeks in a
newspaper published in the county, if there is one, and if there is
none in such county, then in a newspaper published in an adjoining
county.

§ 4411. **Foreign partnership.** A commercial or banking § 1444, Civil C.
partnership, established and transacting business in a place without
the United States, may without filing the certificate or making the
publication prescribed in the last section use in this state the part-
nership name used by it there, although it is fictitious or does not show
the names of the persons interested as partners in such business.

§ 4412. **How certificate executed. Penalty.** The certi- § 1445, Civil C.
cate filed with the clerk of the district court, provided in section § 1, c. 30, 1881.
4410, must be signed by the partners and acknowledged before some
officer authorized to take acknowledgments of conveyances of real
property. Persons doing business as partners, contrary to the pro-
visions of this article shall not maintain any action on or on account
of any contracts made or transactions had in their partnership name
in any court of this state, until they have first filed the certificate
and made the publication herein required; provided, however, that
if such partners shall at any time comply with the provisions of this
article, then such partnership shall have the right to maintain an
action in all such partnership contracts and transactions entered into
prior as well as after such compliance with this article and the dis-
ability heretofore imposed on partnerships by said article for a failure

to comply therewith are hereby removed and made to conform to this section.

§ 1446, Civil C. § **4413. New certificate when members changed.** On every change in the members of a partnership transacting business in this state under a fictitious name, or designation which does not show the names of the persons interested as partners in the business except in the cases mentioned in section 4411, a new certificate must be filed with the clerk of the district court and a new publication made as required by this article on the formation of such partnership.

§ 1447, Civil C. § **4414. Duty of clerk.** Every clerk of the district court must keep a register of the names of firms and persons mentioned in the certificates filed with him pursuant to this article, entering in alphabetical order the name of every such partnership and of each partner therein.

§ 1448, Civil C.
am'd. § **4415. Certified copies evidence.** Copies of the entries of the clerk of the district court, as herein directed, when certified by him and affidavits of publication made as prescribed in section 5693 of the code of civil procedure are presumptive evidence of the facts therein stated.

CHAPTER 64.

SPECIAL PARTNERSHIP.

ARTICLE 1.—FORMATION OF THE PARTNERSHIP.

§ 1449, Civil C. § **4416. Special partnership authorized.** A special or limited partnership may be formed by any two or more persons in the manner and with the effect prescribed in this chapter for the transaction of any business except banking or insurance.

§ 1450, Civil C. § **4417. How constituted.** A special partnership may consist of one or more persons called general partners and one or more persons called special partners.

§ 1451, Civil C. § **4418. How formed.** Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which such partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the partners and their residences, specifying which are general and which are special partners.
4. The amount of capital which each special partner has contributed to the common stock; and,
5. The periods at which such partnership will begin and end.

§ 1452, Civil C. § **4419. Certificate, how executed and filed.** Certificates under the last section must be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, one to be filed in the office of the clerk of the district court of the county or subdivision and the other recorded in the office of the register of deeds of the county in which the principal place of business of the partnership is situated in a book to be kept for that purpose open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the register of deeds in whose office it is recorded, must be filed in the clerk's office as aforesaid and recorded in like manner in the office of

the register of deeds in every such county. If any false statement is made in any such certificate all the persons interested in the partnership are liable as general partners for all the engagements thereof.

§ 4420. **Affidavit required of partners.** An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners has been actually and in good faith paid in the lawful money of the United States, must be filed in the same office with the original certificate. § 1453, Civil C.

§ 4421. **Compliance necessary to formation.** No special partnership is formed until the provisions of the last five sections are complied with. § 1454, Civil C.

§ 4422. **Publication required.** The certificate mentioned in this article or a statement of its substance must be published in a newspaper printed in the county where the original certificate is filed and if no newspaper is there printed then in a newspaper in the state nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing such certificate. In case the publication is not so made the partnership must be deemed general. § 1455, Civil C.

§ 4423. **Affidavit of publication filed.** An affidavit of publication pursuant to the preceding section made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed and is presumptive evidence of the facts therein stated. § 1456, Civil C.

§ 4424. **How renewed or continued.** Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation. § 1457, Civil C.

ARTICLE 2. — POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

§ 4425. **Style of special partnership. Sign.** The business of a special partnership must be conducted under a name consisting of the names or surnames of one or more of the general partners only with or without the addition of the words "and company" or "& Co." Such partnership shall put up in some conspicuous place on the outside and in front of the building in which it has its chief place of business some sign on which shall be painted in legible English characters all the names of all the members of such partnership, designating the special partners. § 1458, Civil C.

§ 4426. **Only general partners have authority.** The general partners only have authority to transact the business of a special partnership. § 1459, Civil C.

§ 4427. **Rights of special partner.** A special partner may at all times investigate the partnership affairs and advise his partners or their agents as to their management. § 1460, Civil C.

§ 4428. **May deal with firm.** A special partner may lend money to the partnership or advance money for it and take from it security therefor and as to such loans or advances has the same right as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied. § 1461, Civil C.

§ 4429. **Who joined in actions.** In all matters relating to a special partnership its general partners may sue and be sued alone in the same manner as if there were no special partners. § 1462, Civil C.

- § 1463, Civil C. **§ 4430. Withdrawal of capital.** No special partner under any pretense may withdraw any part of the capital invested by him in the partnership during its continuance.
- § 1464, Civil C. **§ 4431. May receive interest and profits.** A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.
- § 1465, Civil C. **§ 4432. When special becomes general partner.** If a special partner withdraws capital from the firm contrary to the provisions of this article he thereby becomes a general partner.
- § 1466, Civil C. **§ 4433. When preference void.** Every transfer of the property of a special partnership or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created or security given in like manner and with like intent is in like manner void.

ARTICLE 3. — LIABILITY OF PARTNERS.

- § 1467, Civil C. **§ 4434. Of general partner.** The general partners in a special partnership are liable to the same extent as partners in a general partnership.
- § 1468, Civil C. **§ 4435. Special partners liability limited. Exceptions.** The contribution of a special partner to the capital of the firm and the increase thereof is liable for its debts, but he is not otherwise liable therefor, except as follows:
1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith or the published announcement thereof, he is liable as a general partner to all the creditors of the firm.
 2. If he has willfully interfered with the business of the firm, except as permitted in article 2 of this chapter, he is liable in like manner; or,
 3. If he has willfully joined in or assented to an act contrary to any of the provisions of article 2 of this chapter he is liable in a like manner.
- § 1469, Civil C. **§ 4436. When special liable as general partner.** When a special partner has unintentionally done any of the acts mentioned in the last section he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice.
- § 1470, Civil C. **§ 4437. Estoppel, when contracting with as such.** One who upon making a contract with a partnership accepts from or gives to it a written memorandum of the contract, stating that the partnership is special and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract by reason of any error or defect in the proceedings for the creation of the special partnership prior to the acceptance of the memorandum, if an effort has been made by the partners in good faith to form a special partnership in the manner required by law.

ARTICLE 4. — ALTERATION AND DISSOLUTION.

§ 4438. **When special becomes general partnership.** A § 1471, CIVIL C.
special partnership becomes general, if within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court and the register of deeds with whom the original certificate of the partnership was filed and notice thereof published as is provided in article 1 of this chapter for the publication of this certificate.

§ 4439. **How new special partners admitted.** New special § 1472, CIVIL C.
partners may be admitted into a special partnership upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged or proved and filed with the clerk and recorded in the register's office in which the original certificate was filed according to the provisions of article 1 of this chapter.

§ 4440. **Dissolution. Notice filed and published.** A special § 1473, CIVIL C.
partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded and filed in the office of the clerk of the district court and published once in each week for four successive weeks in a newspaper printed in each county where the partnership has a place of business.

CHAPTER 65.

INSURANCE IN GENERAL.

ARTICLE 1. — DEFINITION OF INSURANCE.

§ 4441. **Defined.** Insurance is a contract whereby one under- § 1474, CIVIL C.
takes to indemnify another against loss, damage or liability arising from an unknown or contingent event.

ARTICLE 2. — WHAT MAY BE INSURED.

§ 4442. **Insurable interest.** Any contingent or unknown event, § 1475, CIVIL C.
whether past or future, which may damnify a person having an insurable interest or create a liability against him may be insured against, subject to the provisions of this chapter, with the exception of an insurance for or against the drawing of any lottery or for or against any chance or ticket in a lottery drawing a prize.

§ 4443. **Insurance classified.** The most usual kinds of § 1476, CIVIL C.
insurance are:

1. Marine insurance.
2. Fire insurance.

3. Life insurance.
4. Health insurance; and,
5. Accident insurance.

§ 1477, Civil C. **§ 4444. All kinds subject to chapter.** All kinds of insurance are subject to the provisions of this chapter.

ARTICLE 3. — PARTIES TO THE CONTRACT.

§ 1478, Civil C. **§ 4445. Insurer and insured defined.** The person who undertakes to indemnify another by a contract of insurance is called the insurer and the person indemnified is called the insured.

§ 1479, Civil C. **§ 4446. Who may insure.** Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, nonresidents and others.

§ 1480, Civil C. **§ 4447. Who may be insured.** Any one except a public enemy may be insured.

§ 1481, Civil C.
am'd. **§ 4448. Insurance of mortgaged property.** When a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

§ 1482, Civil C. **§ 4449. Same. New contract.** If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee and at the time of his assent imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his right.

ARTICLE 4. — INSURABLE INTEREST.

§ 1483, Civil C. **§ 4450. Defined.** Every interest in property, or any relation thereto, or liability in respect thereof of such a nature that a contemplated peril might directly damnify the insured is an insurable interest.

§ 1484, Civil C. **§ 4451. Classified.** An insurable interest in property may consist in:

1. An existing interest.
2. An inchoate interest founded on an existing interest; or,
3. An expectancy coupled with an existing interest in that out of which the expectancy arises.

§ 1485, Civil C. **§ 4452. Carrier or depositary has.** A carrier or depositary of any kind has an insurable interest in a thing held by him as such to the extent of its value.

§ 1486, Civil C. **§ 4453. Contingent or expectant interest not.** A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

§ 1487, Civil C. **§ 4454. Measure of.** The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

§ 1488, Civil C. **§ 4455. Insurance without interest void.** The sole object of insurance is the indemnity of the insured and if he has no insurable interest the contract is void.

§ 4456. **When interest must exist.** An interest insured must exist when the insurance takes effect and when the loss occurs, but need not exist in the meantime. § 1489, Civil C.

§ 4457. **When change of interest suspends insurance.** Except in the cases specified in the next five sections and in the cases of life, accident and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person. § 1490, Civil C.

§ 4458. **Change after loss does not affect.** A change of interest in a thing insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss. § 1491, Civil C.

§ 4459. **Change in one of several things.** A change of interest in one or more of several distinct things insured by one policy does not avoid the insurance as to the others. § 1492, Civil C. am'd.

§ 4460. **Incumbrance or reinsurance of one of several things.** The procurement of any other contract of insurance upon or the incumbrance of one or more of several distinct things insured by one policy does not render void any insurance upon the things not covered by such other contract of insurance or incumbrance; but in case of loss or damage such an amount shall be deducted from the insurance as the value of the property so incumbered or doubly insured bears to the value of all the property covered by the policy. Any agreement made to waive the provisions of this or the preceding section is void.

§ 4461. **Change of interest by death.** A change of interest by will or succession on the death of the insured does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured. § 1493, Civil C.

§ 4462. **Change among joint owners.** A transfer of interest by one of several partners, joint owners or owners in common who are jointly insured to the others does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured. § 1494, Civil C.

§ 4463. **Stipulation of interest void.** Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured or that the policy shall be received as proof of such interest and every policy executed by way of gaming or wagering is void. § 1494, Civil C.

ARTICLE 5. — CONCEALMENT AND REPRESENTATION.

§ 4464. **Concealment defined.** A neglect to communicate that which a party knows and ought to communicate is called a concealment. § 1495, Civil C.

§ 4465. **Rescission on account of.** A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance. § 1493, Civil C.

§ 4466. **Mutual disclosures.** Each party to a contract of insurance must communicate to the other in good faith all facts within his knowledge which are or which he believes to be material to the contract and which the other has not the means of ascertaining and as to which he makes no warranty. § 1497, Civil C.

- § 1498, Civil C. **§ 4467. What not bound to disclose.** Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:
1. Those which the other knows.
 2. Those which in the exercise of ordinary care the other ought to know and of which the former has no reason to suppose him ignorant.
 3. Those of which the other waives communication.
 4. Those which prove or tend to prove the existence of a risk excluded by a warranty and which are not otherwise material; and,
 5. Those which relate to a risk excepted from the policy and which are not otherwise material.
- § 1499, Civil C. **§ 4468. How materiality determined.** Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due in forming his estimate of the disadvantages of the proposed contract or in making his inquiries.
- § 1500, Civil C. **§ 4469. Presumption of knowledge.** Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other and which may affect either the political or material perils contemplated and all general usages of trade.
- § 1501, Civil C. **§ 4470. Right to information waived.** The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, when they are distinctly implied in other facts of which information is communicated.
- § 1502, Civil C. **§ 4471. Information as to interest.** Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as prescribed by section 4488.
- § 1503, Civil C. **§ 4472. Rescission for fraudulent concealment.** An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind.
- § 1504, Civil C. **§ 4473. Matters of opinion.** Neither party to a contract of insurance is bound to communicate even upon inquiry information of his own judgment upon the matters in question.
- § 1505, Civil C. **§ 4474. Form of representation.** A representation may be oral or written.
- § 1506, Civil C. **§ 4475. When may be made.** A representation may be made at the same time with issuing the policy or before it.
- § 1507, Civil C. **§ 4476. Rules of interpretation.** The language of a representation is to be interpreted by the same rules as the language of contracts in general.
- § 1508, Civil C. **§ 4477. What deemed promise.** A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.
- § 1509, Civil C. **§ 4478. Cannot qualify contract; may, implied warranty.** A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.
- § 1510, Civil C. **§ 4479. When may be withdrawn.** A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

§ 4480. **Time to which refers.** The completion of the contract of insurance is the time to which a representation must be presumed to refer. § 1511, Civil C.

§ 4481. **On information and belief.** When a person insured has no personal knowledge of a fact, he may, nevertheless repeat information which he has upon the subject and which he believes to be true with the explanation that he does so on the information of others, or he may submit the information in its whole extent to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence. § 1512, Civil C.

§ 4482. **When deemed false.** A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations. § 1513, Civil C.

§ 4483. **Effect of falsity.** If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. § 1514, Civil C.

§ 4484. **How materiality determined.** The materiality of a representation is determined by the same rule as the materiality of a concealment. § 1515, Civil C.

§ 4485. **When not material.** No oral or written misrepresentation made in the negotiation of a contract or policy of insurance by the insured or in his behalf shall be deemed material or defeat or avoid the policy or prevent its attaching, unless such misrepresentation is made with actual intent to deceive, or unless the matter misrepresented increased the risk of loss.

§ 4486. **Modification. Rescission.** The provisions of this article apply as well to a modification of a contract of insurance as to its original formation. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter such right may be exercised at any time previous to the commencement of an action on the contract. § 1516, Civil C.

ARTICLE 6.—THE POLICY.

§ 4487. **Defined.** The written instrument in which a contract of insurance is set forth is called a policy of insurance. § 1517, Civil C.

§ 4488. **What must specify.** A policy of insurance must specify: § 1518, Civil C.

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,
6. The period during which the insurance is to continue.

§ 4489. **Applied only to interest.** When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest. § 1519, Civil C.

§ 4490. **Insurance by trustee or agent.** When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as an agent or trustee or by other general words in the policy. § 1520, Civil C.

- § 1521, Civil C. **§ 4491. Terms govern joint or common interest.** To render an insurance effected by one partner or part owner, applicable to the interest of his copartners or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.
- § 1522, Civil C. **§ 4492. Only person intended may claim benefit.** When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.
- § 1523, Civil C. **§ 4493. Benefit of any owner.** A policy may be so framed that it will inure to the benefit of whomsoever during the continuance of the risk may become the owner of the interest insured.
- § 1524, Civil C. **§ 4494. Transfer suspends.** The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both the policy and the thing insured.
- § 1525, Civil C. **§ 4495. Classified.** A policy is either open or valued.
- § 1526, Civil C. **§ 4496. Open.** An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.
- § 1527, Civil C. **§ 4497. Valued.** A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.
- § 1528, Civil C. **§ 4498. Running.** A running policy is one which contemplates successive insurances and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.
- § 1529, Civil C. **§ 4499. Receipt for premium. Effect of.** An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.
- § 1530, Civil C. **§ 4500. Agreement not to transfer void.** An agreement made before a loss not to transfer the claim of a person insured against the insurer after the loss has happened is void.
- § 1. c. 69, 1887. **§ 4501. Holder may surrender for cancellation.** The holder of any policy of insurance against loss or damage to property by fire or other casualty hereafter issued by any insurance company doing business in this state may, notwithstanding any provision thereof or contract to the contrary, at any time surrender the same for cancellation; and upon such surrender the company issuing such policy shall retain or receive such proportion and not more of the premium paid or agreed to be paid as corresponds with the usual short rates upon term policies as adopted and maintained by the Minnesota and Dakota fire underwriters' union of St. Paul, Minnesota, for the time the policy remained in force.
- § 2. c. 69, 1887. **§ 4502. Notice necessary to forfeit.** No such policy of insurance shall by virtue of any condition or provision thereof be forfeited, suspended or impaired for nonpayment of any note or obligation taken for the premium, or any part thereof, unless the insurer shall, not less than thirty days prior to the maturity of such premium, note or obligation, mail, postage prepaid, to the assured at his usual post office a notice, stating:

1. The date when such note or obligation will become due.
2. The amount of principal and interest that will then be due.
3. The effect upon the policy of nonpayment.
4. Such notice shall further inform the assured of his right at his own election either to pay in full and keep the policy in full force, or to terminate the insurance by surrendering the policy and paying such part of the whole premium as it shall have earned and must further state the amount which the assured is lawfully required to pay, or which on account of previous payment may be due him in case of his election to terminate the insurance on the day of the maturity of the premium, note or obligation.

ARTICLE 7.—WARRANTIES.

§ 4503. **Classified.** A warranty is either express or implied. § 1531, Civil C.

§ 4504. **No form necessary.** No particular form of words is necessary to create a warranty. § 1532, Civil C.

§ 4505. **Express, must be written.** Every express warranty made at or before the execution of a policy must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy as making a part of it. § 1533, Civil C.

§ 4506. **To what time may relate.** A warranty may relate to the past, the present, the future or to any or all of these. § 1534, Civil C.

§ 4507. **What statement of fact is express warranty.** A statement in a policy of a matter relating to the person or thing insured or to the risk as a fact is an express warranty thereof. § 1535, Civil C.

§ 4508. **Statement of intention a warranty.** A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place. § 1536, Civil C.

§ 4509. **As to future, when need not be fulfilled.** When before the time arrives for the performance of a warranty relating to the future a loss insured against happens or performance becomes unlawful at the place of the contract or impossible, the omission to fulfill the warranty does not avoid the policy. § 1537, Civil C.

§ 4510. **Rescission for violation of material.** The violation of a material warranty or other material provision of a policy on the part of either party thereto entitles the other to rescind. § 1538, Civil C.

§ 4511. **What avoids policy.** A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy. § 1539, Civil C.

§ 4512. **Breach without fraud.** A breach of warranty without fraud merely exonerates an insurer from the time that it occurs, or when it is broken in its inception, prevents the policy from attaching to the risk. § 1540, Civil C.

ARTICLE 8.—PREMIUM.

§ 4513. **When premium payable.** An insurer is entitled to the payment of the premium as soon as the thing insured is exposed to the peril insured against. § 1541, Civil C.

§ 4514. **When insured entitled to return.** A person insured is entitled to a return of premium as follows: § 1542, Civil C.

1. To the whole of the premium if no part of his interest in the thing insured is exposed to any of the perils insured against.

2. When the insurance is made for a definite period of time and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

§ 3, c. 69, 1887.

§ **4515. Premium defined.** The term premium within the meaning of sections 4501, 4502 and 4514 includes policy fees in excess of two dollars on any one policy and all other sums of money paid or agreed to be paid in consideration of the policy of insurance.

§ 1543, Civil C.

§ **4516. Return when insurance voidable.** A person insured is entitled to a return of the premium when the contract is voidable on account of the fraud or misrepresentation of the insurer or on account of facts of the existence of which the insured was ignorant without his fault; or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

§ 1544, Civil C.
am'd.

§ **4517. Not entitled to return.** If a peril insured against has existed and the insurer has been liable for any period, however short, the insured is not entitled to a return of premium so far as that particular risk is concerned, unless the insurance was for a definite period of time, in which case he is entitled to a proportionate return under sections 4501 and 4514.

§ 1545, Civil C.

§ **4518. Return in over insurance by several.** In case of an over insurance by several insurers the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

§ 1546, Civil C.

§ **4519. Contribution to return.** When an over insurance is effected by simultaneous policies the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies.

§ 1547, Civil C.

§ **4520. Same.** When an over insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them and in proportion as the sum for which the premium was paid exceeds the amount for which on account of prior insurance they could be made liable.

ARTICLE 9. — LOSS.

§ 1548, Civil C.

§ **4521. When insurer liable.** An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

§ 1549, Civil C.

§ **4522. Liable for loss in rescuing.** An insurer is liable when the thing insured is rescued from a peril insured against that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession in whole or in part; or when a loss is caused by efforts to rescue the thing insured from a peril insured against.

§ 1550, Civil C.

§ **4523. Not liable for a peril excepted.** When a peril is specially excepted in a contract of insurance, a loss which would not

have occurred but for such peril is thereby excepted, although the immediate cause of the loss was a peril which was not excepted.

§ 4524. **Willful act exonerates; negligence not.** An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured or of his agents or others. § 1551, Civil C.

ARTICLE 10. — NOTICE OF LOSS.

§ 4525. **Without unnecessary delay.** In case of loss upon an insurance against fire an insurer is exonerated, if notice thereof is not given to him by some person insured, or entitled to the benefit of the insurance without unnecessary delay. § 1552, Civil C.

§ 4526. **Only best proof in power required.** When preliminary proof of loss is required by a policy the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. § 1553, Civil C.

§ 4527. **Defects in, how waived.** All defects in a notice of loss or in preliminary proof thereof which the insured might remedy and which the insurer omits to specify to him without unnecessary delay as grounds of objection are waived. § 1554, Civil C.

§ 4528. **Delay in, how waived.** Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objections promptly and specifically upon that ground. § 1555, Civil C.

§ 4529. **Time in which to make. Blanks to be furnished.** Upon notice of loss being given to the insurer on behalf of the insured or of a beneficiary under a policy of life insurance the insurer shall within twenty days after receipt of such notice furnish to the insured or beneficiary, as the case may be, a blank form of proof of loss and the insured shall have sixty days after such blank form is furnished in which to make such proof of loss; in case of life insurance the beneficiary shall have ninety days after receipt of such blank form in which to make such proof of loss. If the insurer shall fail to furnish such blank form of proof of loss within the time aforesaid he shall be deemed to have waived such proof and any agreement made to waive the provisions of this section is void.

§ 4530. **Failure to furnish certificate of another.** If a policy requires by way of preliminary proof of loss the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified. § 1556, Civil C.

ARTICLE 11. — DOUBLE INSURANCE.

§ 4531. **Defined.** A double insurance exists when the same person is insured by several insurers separately in respect to the same subject and interest. § 1557, Civil C.

§ 4532. **Contribution of insurers.** In case of double insurance the several insurers are liable to pay losses thereon as follows: § 1558, Civil C.

1. In fire insurance each insurer must contribute ratably towards the loss without regard to the dates of the several policies.

2. In marine insurance the liability of the several insurers for a total loss, whether actual or constructive, when the policies are not simultaneous is in the order of the dates of the several policies, no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day they are deemed to be simultaneous and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably.

ARTICLE 12. — REINSURANCE.

§ 1559, Civil C. **§ 4533. Defined.** A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

§ 1560, Civil C. **§ 4534. Disclosures required.** When an insurer obtains reinsurance he must communicate all the representations of the original insurer and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk.

§ 1561, Civil C. **§ 4535. Contract of indemnity.** A reinsurance is presumed to be a contract of indemnity against liability and not merely against damage.

§ 1562, Civil C. **§ 4536. Original insured no interest.** The original insured has no interest in a contract of reinsurance.

CHAPTER 66.

MARINE INSURANCE.

ARTICLE 1. — DEFINITION OF MARINE INSURANCE.

§ 1563, Civil C. **§ 4537. Definition.** Marine insurance is an insurance against risks connected with navigation to which a ship, cargo, freightage, profits or other insurable interest in movable property may be exposed during a certain voyage or a fixed period of time.

ARTICLE 2. — INSURABLE INTEREST.

§ 1564, Civil C. **§ 4538. Owner always has.** The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

§ 1565, Civil C. **§ 4539. Hypothecation reduces interest.** The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

§ 4540. **Freightage defined as to insurance.** Freightage in the sense of a policy of marine insurance signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others. § 1566, Civil C.

§ 4541. **Expected freightage.** The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. § 1567, Civil C.

§ 4542. **Same.** The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the chartered voyage; and if the price is to be paid for the carriage of goods, when they are actually on board or there is some contract for putting them on board and both ship and goods are ready for the specified voyage. § 1568, Civil C.

§ 4543. **When profits insurable interest.** One who has an interest in the thing from which profits are expected to proceed has an insurable interest in the profits. § 1569, Civil C.

§ 4544. **Charterer has.** The charterer of a ship has an insurable interest in it to the extent that he is liable to be damnified by its loss. § 1570, Civil C.

ARTICLE 3.—CONCEALMENT.

§ 4545. **Disclosures more extensive.** In marine insurance each party is bound to communicate in addition to what is required by section 4466 all the information which he possesses material to the risk, except such as is mentioned in section 4467 and to state the exact and whole truth in relation to all matters that he represents or upon inquiry assumes to disclose. § 1571, Civil C.

§ 4546. **Belief of another material.** In marine insurance information of the belief or expectation of a third person in reference to a material fact is material. § 1572, Civil C.

§ 4547. **When knowledge of loss presumed.** A person insured by a contract of marine insurance is presumed to have had knowledge at the time of insuring of a prior loss, if the information might possibly have reached him in the usual mode of transmission and at the usual rate of communication. § 1573, Civil C.

§ 4548. **What does not vitiate entire contract.** A concealment in marine insurance in respect to any of the following matters does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed: § 1574, Civil C.

1. The national character of the insured.
2. The liability of the thing insured to capture and detention.
3. The liability to seizure from breach of foreign laws of trade.
4. The want of necessary documents; and,
5. The use of false and simulated papers.

ARTICLE 4.—REPRESENTATIONS.

§ 4549. **Rescission for false.** If a representation by a person insured by contract of marine insurance is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract. § 1575, Civil C.

§ 4550. **Without fraud does not avoid.** The eventual falsity of a representation as to expectation does not in the absence of fraud avoid a contract of insurance. § 1576, Civil C.

ARTICLE 5. — IMPLIED WARRANTIES.

- § 1577, Civil C. **§ 4551. Seaworthiness.** In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance a warranty is implied that the ship is seaworthy.
- § 1578, Civil C. **§ 4552. Seaworthy defined.** A ship is seaworthy when reasonably fit to perform the services and to encounter the ordinary perils of the voyage contemplated by the parties to the policy.
- § 1579, Civil C. **§ 4553. When foregoing warranty complied with.** An implied warranty of seaworthiness is complied with if the ship is seaworthy at the time of the commencement of the risk, except in the following cases:
1. When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship is seaworthy at the commencement of every voyage she may undertake during that time; and,
 2. When the insurance is upon the cargo, which by the terms of the policy, or the description of the voyage or the established custom of the trade is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transhipped is seaworthy at the commencement of its particular voyage.
- § 1580, Civil C. **§ 4554. What seaworthiness includes.** A warranty of seaworthiness extends not only to the structure of the ship itself, but requires that it be properly laden and provided with a competent master, a sufficient number of competent officers and seamen and the requisite appurtenances and equipments such as cables and anchors, food, fuel and lights and other necessary or proper stores and implements for the voyage.
- § 1581, Civil C. **§ 4555. As to each part of voyage.** When different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if at the commencement of each portion the ship is seaworthy with reference to that portion.
- § 1582, Civil C. **§ 4556. Delay in repairing exonerates.** When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom.
- § 1583, Civil C. **§ 4557. Seaworthy as to cargo.** A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo be unseaworthy for the purpose of insurance upon the cargo.
- § 1584, Civil C. **§ 4558. Neutral papers.** When the nationality or neutrality of a ship or cargo is expressly warranted it is implied that the ship will carry the requisite documents to show such nationality or neutrality and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE 6. — THE VOYAGE AND DEVIATION.

- § 1585, Civil C. **§ 4559. Voyage fixed by mercantile usage.** When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places.

§ 4560. **When not so fixed.** If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which to a master of ordinary skill and discretion would seem the most natural, direct and advantageous. § 1586, CIVIL C.

§ 4561. **Deviation defined.** Deviation is a departure from the course of the voyage insured mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage. § 1587, CIVIL C.

§ 4562. **When proper.** A deviation is proper: § 1588, CIVIL C.

1. When caused by circumstances over which neither the master nor the owner of the ship has any control.

2. When necessary to comply with a warranty or to avoid a peril, whether insured against or not.

3. When made in good faith and upon reasonable grounds of belief in its necessity to avoid a peril; or,

4. When made in good faith for the purpose of saving human life or relieving another vessel in distress.

§ 4563. **Improper.** Every deviation not specified in the last section is improper. § 1589, CIVIL C.

§ 4564. **Insurer not liable after.** An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation. § 1590, CIVIL C.

ARTICLE 7. — LOSS.

§ 4565. **Classified.** A loss may be either total or partial. § 1591, CIVIL C.

§ 4566. **Partial.** Every loss which is not total is partial. § 1592, CIVIL C.

§ 4567. **Total loss classified.** A total loss may be either actual or constructive. § 1593, CIVIL C.

§ 4568. **Actual total.** An actual total loss is caused by: § 1594, CIVIL C.

1. A total destruction of the thing insured.

2. The loss of the thing by sinking or by being broken up.

3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

4. Any other event which entirely deprives the owner of the possession at the port of destination of the thing insured.

§ 4569. **Constructive total.** A constructive total loss is one which gives to a person insured a right to abandon under section 4577. § 1595, CIVIL C.

§ 4570. **When actual loss presumed.** An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case. § 1596, CIVIL C.

§ 4571. **Duty to procure another ship for cargo.** When a ship is prevented at an intermediate port from completing the voyage by the perils insured against, the master must make every exertion to procure in the same or a contiguous port another ship for the purpose of conveying the cargo to its destination and the liability of a marine insurer thereon continues after they are thus reshipped. § 1597, CIVIL C.

§ 4572. **Liable for cost of reshipment.** In addition to the liability mentioned in the last section a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage and all other expenses incurred in saving the cargo reshipped pursuant to the last section up to the amount insured. § 1598, CIVIL C.

- § 1599, Civil C. **§ 4573. Payment without notice.** Upon an actual total loss a person insured is entitled to payment without notice of abandonment.
- § 1600, Civil C. **§ 4574. General average loss.** When it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average a marine insurer is not liable for any particular average loss not depriving the insured of the possession at the port of destination of the whole of such thing or class of things, even though it becomes entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured.
- § 1601, Civil C. **§ 4575. What against actual total loss covers.** An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession at the port of destination of the entire thing insured.

ARTICLE 8. — ABANDONMENT.

- § 1602, Civil C. **§ 4576. Defined.** Abandonment is the act by which after a constructive total loss a person insured by a contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured.
- § 1603, Civil C. **§ 4577. When authorized.** A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured and recover for a total loss thereof when the cause of the loss is a peril insured against:
1. If more than half thereof in value is actually lost or would have to be expended to recover it from the peril.
 2. If it is injured to such an extent as to reduce its value more than one-half.
 3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,
 4. If, the thing insured being cargo and freightage, the voyage cannot be performed nor another ship procured by the master within a reasonable time and with reasonable diligence to forward the cargo without incurring the like expenses or risk. But freightage cannot in any case be abandoned unless the ship is also abandoned.
- § 1604, Civil C. **§ 4578. Must be absolute.** An abandonment must be neither partial nor conditional.
- § 1605, Civil C. **§ 4579. When made.** An abandonment must be made within a reasonable time after information of the loss and after the commencement of the voyage and before the party abandoning has information of its completion.
- § 1606, Civil C. **§ 4580. When becomes ineffectual.** When the information upon which an abandonment has been made proves incorrect or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.
- § 1607, Civil C. **§ 4581. Made by written notice.** Abandonment is made by giving notice thereof to the insurer which may be done orally or in writing.

§ 4582. **Requisites of notice.** A notice of abandonment must be explicit and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor and need not be accompanied with proof of interest or of loss. § 1608, Civil C.

§ 4583. **Sustained only on cause specified.** An abandonment can be sustained only upon the cause specified in the notice thereof. § 1609, Civil C.

§ 4584. **Equivalent to transfer.** An abandonment is equivalent to a transfer by the insured of his interest to the insurer with all the chances of recovery and indemnity. § 1610, Civil C.

§ 4585. **Payment entitles insurer to salvage.** If a marine insurer pays for a loss as if it was an actual total loss, he is entitled to whatever may remain of the thing insured or its proceeds or salvage as if there had been a formal abandonment. § 1611, Civil C.

§ 4586. **Insured's agents become insurer's on abandonment.** Upon an abandonment acts done in good faith by those who were agents of the insured in respect to the thing insured subsequent to the loss are at the risk of the insurer and for his benefit. § 1612, Civil C.

§ 4587. **Acceptance of unnecessary.** An acceptance of an abandonment is not necessary to the rights of the insured and is not to be presumed from the mere silence of the insurer upon his receiving notice of abandonment. § 1613, Civil C.

§ 4588. **Acceptance conclusive.** The acceptance of an abandonment, whether express or implied, is conclusive upon the parties and admits the loss and sufficiency of the abandonment. § 1614, Civil C.

§ 4589. **Accepted is irrevocable.** An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. § 1615, Civil C.

§ 4590. **To whom freightage belongs after.** On an accepted abandonment of a ship freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship. § 1616, Civil C.

§ 4591. **Refusal to accept.** If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured. § 1617, Civil C.

§ 4592. **Rights, if abandonment omitted.** If a person insured omits to abandon he may, nevertheless, recover his actual loss. § 1618, Civil C.

ARTICLE 9. — MEASURE OF INDEMNITY.

§ 4593. **Valuation conclusive between parties.** A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia before its insurance and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract. § 1619, Civil C.

§ 4594. **Partial loss. Liability.** A marine insurer is liable upon a partial loss only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured. § 1620, Civil C.

- § 1621, Civil C. **§ 4595. Recovery of profits, how estimated.** When profits are separately insured in a contract of marine insurance, the insured is entitled to recover in case of loss a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.
- § 1622, Civil C. **§ 4596. How loss determined on valued policy.** In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk the valuation applies only in proportion to such part.
- § 1623, Civil C. **§ 4597. When loss of profits presumed.** When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise and the valuation fixes their amount.
- § 1624, Civil C. **§ 4598. How loss on open policy estimated.** In estimating a loss under an open policy of marine insurance the following rules are to be observed:
1. The value of a ship is its value at the beginning of the risk including all articles or charges which add to its permanent value or which are necessary to prepare it for the voyage insured.
 2. The value of the cargo is its actual cost to the insured, when laden on board or when that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival.
 3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,
 4. The cost of insurance is in each case to be added to the value thus estimated.
- § 1625, Civil C. **§ 4599. How partial loss of cargo estimated.** If a cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value, which the market price at that port of the thing so damaged bears to the market price it would have brought if sound.
- § 1626, Civil C. **§ 4600. Liability for repairs and labor to recover.** A marine insurer is liable for all the expenses attendant upon a loss which forces a ship into port to be repaired; and when it is agreed that the insured may labor for the recovery of the property the insurer is liable for the expense incurred thereby; such expense in either case being in addition to the total loss, if that afterward occurs.
- § 1627, Civil C. **§ 4601. Liability for insured's contribution to general average.** A marine insurer is liable for a loss falling upon the insured through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.
- § 1628, Civil C. **§ 4602. Subrogation of right to contribution.** When a person insured by a contract of marine insurance has a demand against others for contribution he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right.

§ 4603. Liability for partial loss of ship. In the case of a partial loss of a ship or its equipment the old materials are to be applied toward payment for the new and whether the ship is new or old a marine insurer is liable for only two-thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full and for sheathing metal at a depreciation of only two and one-half per cent for each month that it has been fastened to the ship. § 1629, Civil C.

CHAPTER 67.

FIRE INSURANCE.

§ 4604. Rescission for alteration in use increasing risk § 1630, Civil C.
An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured and increasing the risk entitles an insurer to rescind a contract of fire insurance.

§ 4605. Not if risk not increased. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance. § 1631, Civil C.

§ 4606. When contract unaffected, though risk increased. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss. § 1632, Civil C.

§ 4607. Measure of indemnity. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance. § 1633, Civil C.

§ 4608. Standard policy. No fire insurance company, corporation or association, their officers or agents, shall make, issue, use or deliver for use any fire insurance policy or renewal of any fire policy on property in this state other than such as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form of contract or policy heretofore filed in the office of the commissioner of insurance as a standard policy for this state and no other or different provision, agreement, condition or clause shall in any manner be made a part of such contract or policy or be indorsed thereon or delivered therewith, except as follows, to-wit: § 4, c. 74, 1890.
am'd.

1. The name of the company, its location and place of business, the date of its incorporation or organization, and the state or country under which the same is organized, the amount of paid up capital stock, whether it is a stock or mutual company, the names of its officers, the number and date of the policy; and if it is issued through a manager or agent of the company, the words, "this policy shall not be valid until countersigned by the duly authorized manager or agent of the company at....." may be printed on policies issued on property in this state.

2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for, may be written upon or attached or appended to any policy issued on property in this state.

3. A company, corporation or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to do business in this state, may with the approval of the commissioner of insurance, if the same is not already included in the standard form as filed in the office of the commissioner of insurance, print on its policies any provision which it is required by law to insert therein, if such provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard form provided for herein, but said provision shall be printed apart from the other provisions, agreements or conditions of the policy and in type not smaller than the body of the policy and under a separate title, as follows: "Provisions required by law to be stated in this policy" and be a part of said policy.

4. There may be indorsed on the outside of any policy herein provided for the name, with the word "agent or agents" and place of business, of any insurance agent or agents, either by writing, printing, stamping or otherwise.

5. When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the heading of such policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. And in the printed conditions of such policy the necessary change may be made from the singular to the plural number, when reference is had to the companies issuing such policies.

§ 4609. Construction of standard policy. Policies of insurance in the form prescribed by the last section shall be in all respects subject to the same rules of construction as to their effect or the waiver of any of their provisions as if the form thereof had not been prescribed.

CHAPTER 68.

LIFE AND HEALTH INSURANCE.

§ 1634, Civil C. **§ 4610. When payable.** An insurance upon life may be made payable on the death of the person or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or termination of life.

§ 1635, Civil C. **§ 4611. In whom person has insurable interest.** Every person has an insurable interest in the life and health:

1. Of himself.

2. Of any person on whom he depends wholly or in part for education or support.

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest vested in him depends.

§ 4612. **Policy transferable.** A policy of insurance upon life or health may pass by transfer, will or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered. § 1636, Civil C.

§ 4613. **When notice of transfer unnecessary.** Notice to an insurer of a transfer or bequest therefor is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required. § 1637, Civil C.

§ 4614. **Measure of indemnity.** Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. § 1638, Civil C.

CHAPTER 69.

INDEMNITY.

§ 4615. **Defined.** Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person. § 1639, Civil C.

§ 4616. **Against unlawful act void.** An agreement to indemnify a person against an act thereafter to be done is void, if the act is known by such person at the time of doing it to be unlawful. § 1640, Civil C.

§ 4617. **Against act done valid, unless felony.** An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony. § 1641, Civil C.

§ 4618. **Against act of person includes agents.** An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents. § 1642, Civil C.

§ 4619. **Several includes each.** An agreement to indemnify several persons applies to each unless a contrary intention appears. § 1643, Civil C.

§ 4620. **When liable jointly with person indemnified.** One who indemnifies another person against an act to be done by the latter, is liable jointly with the person indemnified and separately to every person injured by such act. § 1644, Civil C.

§ 4621. **Rules to be applied in interpretation.** In the interpretation of a contract of indemnity the following rules are to be applied, unless a contrary intention appears: § 1645, Civil C. am'd.

1. Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims or demands, or damages or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith and in the exercise of reasonable discretion.

4. The person indemnifying is bound on request of the person indemnified to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity; but the person indemnified has the right to conduct such defense, if he chooses to do so.

5. If after request the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

7. A stipulation, that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits which by want of ordinary care he failed to establish in the action.

§ 1646, CIVIL C. **§ 4622. Engagement to answer for violation of duty. Reimbursement.** When one at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

§ 1647, CIVIL C. **§ 4623. When sureties called bail.** Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals and known as undertakings or recognizances, the sureties are called bail.

§ 1648, CIVIL C. **§ 4624. Obligations of bail, how governed.** The obligations of bail are governed by the statutes specially applicable thereto.

CHAPTER 70.

GUARANTY.

ARTICLE 1.—DEFINITION OF GUARANTY.

§ 1649, CIVIL C. **§ 4625. Defined.** A guaranty is a promise to answer for the debt, default or miscarriage of another person.

§ 1650, CIVIL C. **§ 4626. Knowledge of principal unnecessary.** A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE 2.—CREATION OF GUARANTY.

§ 1651, CIVIL C. **§ 4627. Consideration for.** When a guaranty is entered into at the same time with the original obligation or with the acceptance of the latter by the guarantee and forms with that obligation a part

of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

§ 4628. When must be in writing. Except as prescribed by § 1652, Civil C. the next section a guaranty must be in writing and signed by the guarantor; but the writing need not express a consideration.

§ 4629. When need not be in writing. A promise to answer § 1653, Civil C. for the obligation of another in any of the following cases is deemed an original obligation of the promiser and need not be in writing:

1. When the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.

2. When the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor and the person in whose behalf it is made his surety.

3. When the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promiser, whether moving from either party to the antecedent obligation or from another person.

4. When a factor undertakes for a commission to sell merchandise and guarantee the sale.

5. When the holder of an instrument for the payment of money upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

§ 4630. Acceptance necessary. A mere offer to guarantee is § 1654, Civil C. not binding until notice of its acceptance is communicated by the guaratee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE 3.—INTERPRETATION OF GUARANTY.

§ 4631. Of contract, what implied. In a guaranty of a § 1655, Civil C. contract the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

§ 4632. Of obligations, what implied. A guaranty to the § 1656, Civil C. effect that an obligation is good or is collectible imports that the debtor is solvent and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

§ 4633. When not discharged by omission. A guaranty § 1657, Civil C. such as is mentioned in the last section is not discharged by an omission to take proceedings upon the principal debt or upon any

collateral security for its payment, if no part of the debt could have been collected thereby.

- § 1658, Civil C. **§ 4634. When insolvency presumed from removal.** In the cases mentioned in section 4632 the removal of the principal from the state leaving no property therein from which the obligation might be satisfied is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

ARTICLE 4. — LIABILITY OF GUARANTORS.

- § 1659, Civil C. **§ 4635. When guaranty deemed unconditional.** A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.
- § 1660, Civil C. **§ 4636. When guarantor of payment liable.** A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal and without demand or notice.
- § 1661, Civil C. **§ 4637. Liability on conditional obligation.** When one guarantees a conditional obligation, his liability is commensurate with that of his principal and he is not entitled to notice of the default of the principal, unless he is unable by the exercise of reasonable diligence to acquire information of such default and the creditor has actual notice thereof.
- § 1662, Civil C. **§ 4638. Limit of obligation.** The obligation of a guarantor must be neither larger in amount, nor in other respects more burdensome, than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.
- § 1663, Civil C. **§ 4639. Not liable on principal's unlawful contract.** A guarantor is not liable if the contract of the principal is unlawful, but he is liable, notwithstanding any mere personal disability of the principal, though the disability is such as to make the contract void against the principal.

ARTICLE 5. — CONTINUING GUARANTY.

- § 1664, Civil C. **§ 4640. Defined.** A guaranty relating to a future liability of the principal under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied is called a continuing guaranty.
- § 1665, Civil C. **§ 4641. When may be revoked.** A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE 6. — EXONERATION OF GUARANTORS.

- § 1666, Civil C. **§ 4642. When exonerated.** A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal in respect thereto in any way impaired or suspended.
- § 1667, Civil C. **§ 4643. Preceding section limited.** A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy within the meaning of the last section.

§ 4644. **Guarantor once exonerated not liable.** The rescission of an agreement altering the original obligation of a debtor or impairing the remedy of a creditor does not restore the liability of a guarantor who has been exonerated by such agreement. § 1668, Civil C.

§ 4645. **Part performance, proportional exoneration.** The acceptance by a creditor of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof in the same measure as that of the principal, but does not otherwise affect it. § 1669, Civil C.

§ 4646. **Mere delay no exoneration.** Mere delay on the part of a creditor to proceed against the principal or to enforce any other remedy does not exonerate a guarantor. § 1670, Civil C.

§ 4647. **Liability of guarantor indemnified.** A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor without the assent of the guarantor may have modified the contract or released the principal. § 1671, Civil C.

§ 4648. **Principal discharged by law no exoneration.** A guarantor is not exonerated by the discharge of his principal by operation of law without the intervention or omission of the creditor. § 1672, Civil C.

CHAPTER 71.

SURETYSHIP.

ARTICLE 1.—WHO ARE SURETIES.

§ 4649. **Defined.** A surety is one who at the request of another and for the purpose of securing to him a benefit becomes responsible for the performance by the latter of some act in favor of a third person or hypothecates property as security therefor. § 1673, Civil C.

§ 4650. **Surety appearing as principal.** One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety except as against persons who have acted on the faith of his apparent character of principal. § 1674, Civil C.

ARTICLE 2.—LIABILITY OF SURETIES.

§ 4651. **Express terms govern.** A surety cannot be held beyond the express terms of his contract and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty. § 1675, Civil C.

§ 4652. **How terms of contract interpreted.** In interpreting the terms of a contract of suretyship the same rules are to be observed as in the case of other contracts. § 1676, Civil C.

§ 4653. **Is surety after judgment.** Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety. § 1677, Civil C.

- § 1678, Civil C. **§ 4654. Exonerated by performance or offer.** Performance of the principal obligation or an offer of such performance duly made as provided in this code exonerates a surety.
- § 1679, Civil C. **§ 4655. How exonerated.** A surety is exonerated:
1. In like manner with a guarantor.
 2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights or which lessens his security; or,
 3. To the extent to which he is prejudiced by an omission of the creditor to do anything when required by the surety which it is his duty to do.

ARTICLE 3. — RIGHTS OF SURETIES.

- § 1680, Civil C. **§ 4656. Same as guarantor.** A surety has all the rights of a guarantor whether he becomes personally responsible or not.
- § 1681, Civil C. **§ 4657. May require proceedings against principal.** A surety may require his creditors to proceed against the principal or to pursue any other remedy in his power, which the surety cannot himself pursue and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.
- § 1682, Civil C. **§ 4658. May compel principal to perform.** A surety may compel his principal to perform the obligation when due.
- § 1683, Civil C. **§ 4659. Principal bound to reimburse surety.** If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act except as prescribed by the next section.
- § 1684, Civil C. **§ 4660. Entitled to same remedies as creditor. Contribution.** A surety upon satisfying the obligations of the principal is entitled to enforce every remedy, which the creditor then has against the principal to the extent of reimbursing what he has expended; and also to require all his cosureties to contribute thereto without regard to the order of time in which they became such.
- § 1685, Civil C. **§ 4661. Subrogated to rights of creditors.** A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by him afterwards, whether the surety was aware of the security or not.
- § 1686, Civil C. **§ 4662. Hypothecated property of principal first applied.** Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE 4. — RIGHTS OF CREDITORS.

- § 1687, Civil C. **§ 4663. Entitled to surety's securities.** A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation and may upon the maturity of the obligation compel the application of such security to its satisfaction.

ARTICLE 5. — LETTER OF CREDIT.

§ 4664. **Defined.** A letter of credit is a written instrument addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. § 1688, Civil C.

§ 4665. **May be to several.** A letter of credit may be addressed to several persons in succession. § 1689, Civil C.

§ 4666. **To whom writer liable.** The writer of a letter of credit is upon the default of the debtor liable to those who gave credit in compliance with its terms. § 1690, Civil C.

§ 4667. **Classified and classes defined.** A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description the letter is special. All other letters of credit are general. § 1691, Civil C.

§ 4668. **Authority conferred by general.** A general letter of credit gives any person to whom it may be shown authority to comply with its requests and by his so doing it becomes as to him of the same effect as if addressed to him by name. § 1692, Civil C.

§ 4669. **Successive credits.** Several persons may successively give credit upon a general letter. § 1693, Civil C.

§ 4670. **When continuing guaranty.** If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty. § 1694, Civil C.

§ 4671. **Notice unnecessary unless provided.** The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice. § 1695, Civil C.

§ 4672. **Credit given must agree with letter.** If a letter of credit prescribes the persons by whom or the mode in which the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which in these respects conform strictly to the terms of the letter. § 1696, Civil C.

CHAPTER 72.

LIENS IN GENERAL.

ARTICLE 1. — DEFINITION OF LIENS.

§ 4673. **Defined.** A lien is a charge imposed upon specific property by which it is made security for the performance of an act. § 1697, Civil C.

§ 4674. **Classified.** Liens are either general or special. § 1698, Civil C.

§ 4675. **General.** A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property. § 1699, Civil C.

- § 1700, Civil C. **§ 4676. Special.** A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation and of such obligations as may be incidental thereto. When the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him as a part of the claim for which his own lien exists.
- § 1701, Civil C. **§ 4677. Certain liens subject to this chapter.** Contracts of mortgage, pledge, bottomry or respondentia are subject to all the provisions of this chapter.

ARTICLE 2.—CREATION OF LIENS.

- § 1702, Civil C. **§ 4678. How created.** A lien is created:
1. By contract of the parties; or,
2. By operation of law.
- § 1703, Civil C. **§ 4679. By operation of law.** No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.
- § 1704, Civil C. **§ 4680. Lien on future interest.** An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing to the extent of such interest.
- § 4681. Upon crops limited.** A lien by contract upon crops shall attach only to the crop next maturing after the delivery of such contract.
- § 1705, Civil C. **§ 4682. Obligations not in existence.** A lien may be created by contract to take immediate effect as security for the performance of obligations not then in existence.

ARTICLE 3.—EFFECT OF LIENS.

- § 1706, Civil C. **§ 4683. Transfer no title.** Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.
- § 1707, Civil C.
am'd. **§ 4684. Contracts for forfeiting property subject to void.** All contracts for the forfeiture of property subject to a lien in satisfaction of the obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void.
- § 1708, Civil C. **§ 4685. Does not imply obligation to perform.** The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.
- § 1709, Civil C. **§ 4686. Not security for other than original obligations.** The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property, for the performance of any other obligation than that which the lien originally secured.
- § 1710, Civil C. **§ 4687. Extent of compensation to holder.** One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower under sections 4048 and 4049.

ARTICLE 4.—PRIORITY OF LIENS.

§ 4688. **Priority according to date.** Other things being equal, different liens upon the same property have priority according to the time of their creation except in cases of bottomry and respondentia. § 1711, CIVIL C.

§ 4689. **Mortgage for price prior to all.** A mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser, subject to the operation of the recording laws. § 1712, CIVIL C.

§ 4690. **Order of resort for payment.** When one has a lien upon several things and other persons have subordinate liens upon, or interests in some but not all of the same things, the person having the prior lien, if he can do so without the risk of loss to himself or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested: § 1713, CIVIL C. am'd.

1. To the things upon which he has an exclusive lien.

2. To the things which are subject to the fewest subordinate liens.

3. In like manner inversely to the number of subordinate liens upon the same thing; and,

4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

(a) To things which have not been transferred since the prior lien was created.

(b) To the things which have been so transferred without a valuable consideration; and,

(c) To the things which have been so transferred for a valuable consideration in the inverse order of the transfers.

ARTICLE 5.—REDEMPTION OF LIENS.

§ 4691. **Redemption by whom and when made.** Every person having an interest in property, subject to a lien, has a right to redeem it from the lien, at any time after the claim is due and before his right of redemption is foreclosed. § 1714, CIVIL C.

§ 4692. **Inferior lien holder may redeem. Subrogation.** One who has a lien inferior to another upon the same property has a right: § 1715, CIVIL C.

1. To redeem the property in the same manner as its owner might from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien when necessary for the protection of his interests, upon satisfying the claim secured thereby.

§ 4693. **How made.** Redemption from a lien is made by performing the act for the performance of which it is a security, and paying the damages if any, to which the holder of the lien is entitled for delay, or by offering to perform such act and pay such damages; provided, that if the act requires the delivery of money, property or a conveyance of property the same shall be deposited and notice thereof given as provided in section 3818. § 1716, CIVIL C. am'd.

ARTICLE 6.—EXTINCTION OF LIENS.

- § 1717, Civil C. **§ 4694. Deemed accessory to act secured.** A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.
- § 1718, Civil C.
am'd. **§ 4695. Extinguished by sale of property. What defendant may show in conversion.** The sale of any property on which there is a lien in satisfaction of the claim secured thereby, or, in case of personal property its wrongful conversion by the person holding the lien extinguishes the lien thereon; provided, however, that in an action for the conversion of personal property the defendant may show in mitigation of damages the amount due on any lien to which the plaintiff's rights were subject, and which was held or paid by the defendant or any person under whom he claims.
- § 1719, Civil C. **§ 4696. Not extinguished by mere lapse of time.** A lien is not extinguished by the mere lapse of the time within which under the provisions of the code of civil procedure an action can be brought upon the principal obligation.
- § 1720, Civil C. **§ 4697. Not extinguished by partial performance.** The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.
- § 1721, Civil C. **§ 4698. By restoration of property if lien dependent on possession.** The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for a good consideration.

CHAPTER 73.

MORTGAGE.

ARTICLE 1.—MORTGAGE IN GENERAL.

- § 1722, Civil C. **§ 4699. Defined. Formalities necessary.** Mortgage is a contract by which specific property is hypothecated for the performance of an act without the necessity of a change of possession. A mortgage of real property can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant of real property.
- § 1723, Civil C. **§ 4700. Lien special. Independent of possession.** The lien of a mortgage is special, unless otherwise expressly agreed and is independent of possession.

§ 4701. What transfers deemed mortgage. Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage, except when in the case of personal property, it is accompanied by an actual change of possession in which case it is deemed a pledge. § 1724, CIVIL C.

§ 4702. Bottomry and respondentia not affected. Contracts of bottomry or respondentia, although in the nature of mortgages are not affected by any of the provisions of this chapter. § 1725, CIVIL C.

§ 4703. When transfer may be shown to be mortgage. The fact that a transfer was made subject to a defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer for value and without notice, though the fact does not appear by the terms of the instrument. § 1726, CIVIL C.

§ 4704. What may be mortgaged. Any interest in property which is capable of being transferred may be mortgaged. § 1727, CIVIL C.

§ 4705. After acquired title subject to. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution. § 1727, CIVIL C.

§ 4706. Not bound to perform act secured without covenant. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect. § 1727, CIVIL C.

§ 4707. Assigning debt carries security. The assignment of a debt secured by a mortgage carries with it the security. § 1727, CIVIL C.

§ 4708. On property adversely held. A mortgage may be created upon property held adversely to the mortgagor. A mortgage of property held adversely to the mortgagor takes effect from the time at which he or one claiming under him obtains possession of the property, but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage. § 1728, CIVIL C.

§ 4709. May confer power of sale. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security. § 1729, CIVIL C.

§ 4710. Such power a trust. A power of sale under a mortgage is a trust and as to real property can be executed only in the manner prescribed by the code of civil procedure. § 1730, CIVIL C.

§ 4711. Requisites of power of attorney to execute. A power of attorney to execute a mortgage must be in writing subscribed, acknowledged or proved, certified and recorded in like manner as powers of attorney for grants of real property. § 1730, CIVIL C.

§ 4712. Lien on everything grant would pass. A mortgage is a lien upon everything that would pass by a grant of the property and upon nothing more. § 1731, CIVIL C.

§ 4713. Against all claiming under mortgagor. Exception. A mortgage is a lien upon the property mortgaged in the hands of every one claiming under the mortgagor subsequently to its execution, except purchasers and incumbrancers in good faith without notice and for value and except as otherwise provided by article 3 of this chapter. § 1732, CIVIL C.

§ 1733, Civil C. **§ 4714. Mortgagee not entitled to possession.** A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of a mortgage the mortgagor may agree to such change of possession without a new consideration. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

§ 1734, Civil C. **§ 4715. Foreclosure.** A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the code of civil procedure.

§ 1735, Civil C. **§ 4716. Record of assignment. How record operates.** An assignment of a mortgage may be recorded in like manner as a mortgage and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

§ 1735, Civil C. **§ 4717. Of what such record not notice.** When the mortgage is executed as security for money due or to become due on a promissory note, bond or other instrument designated in the mortgage, the record of the assignment of the mortgage is not of itself notice to a mortgagor, his heirs or personal representatives so as to invalidate any payment made by them or either of them to the person holding such note, bond or other instrument.

§ 1735, Civil C. **§ 4718. How recorded mortgage discharged by entry.** A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the register who must certify the acknowledgment in form substantially as follows:

Signed and acknowledged before me this.....day of.....
in the year.....

A. B., Register.

§ 1735, Civil C. **§ 4719. How by mortgagee's certificate.** A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid or otherwise satisfied and discharged.

§ 4720. Discharge by foreign executor or administrator. When an executor or administrator shall be appointed in any other state or foreign country, on the estate of any person not a resident of this state at the time of his decease, and no executor or administrator thereon shall have been appointed in this state, such foreign executor or administrator, upon filing in the office of the register of deeds of any county in which any mortgage held by the estate of such deceased person is filed or recorded an authenticated copy of his appointment, may execute, acknowledge and deliver a certificate of discharge of such mortgage the same as and with like effect as executors and administrators appointed under the laws of this state may do.

§ 4721. Discharge by heir or legatee. Any heir or legatee of such deceased person, residing within or without the state, upon recording in the office of the register of deeds an authenticated copy of the judgment or decree of the court, transferring to such heir or legatee the ownership of any such mortgage may, in like manner and with like effect, satisfy or release such mortgage.

§ 4722. **Discharge by foreign guardian of minor.** Any guardian appointed in any other state or foreign country of a minor holding and owning a mortgage upon property in this state, upon filing in the office of the register of deeds of the county in which the property is situated an authenticated copy of his appointment as guardian and the same proof of the ownership of such mortgage as is required in the last section, may in like manner and with like effect satisfy or release such mortgage.

§ 4723. **Such certificate must be recorded.** A certificate of the discharge of a mortgage and a proof or acknowledgment thereof must be recorded at length and a reference made in the record to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded. § 1735, Civil C.

§ 4724. **When mortgage satisfied mortgagee must on demand discharge. Penalty.** When any mortgage or lien upon property has been satisfied, the owner of such mortgage or lien must immediately on demand of the owner of the property execute and deliver to him a certificate of the discharge thereof, and must at the expense of the owner of the property acknowledge the execution thereof so as to entitle it to be recorded or he must enter satisfaction or cause satisfaction of such mortgage or lien to be entered of record; and any owner of any mortgage or lien, who refuses to execute and deliver to the owner of the property covered by the mortgage or lien the certificate of discharge and to acknowledge the execution thereof or to enter satisfaction or cause satisfaction to be entered of the mortgage or lien as provided by law, is liable to the owner of such property or his assignee or legal representatives for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars. § 1735, Civil C. am'd.

ARTICLE 2. — MORTGAGE OF REAL PROPERTY.

§ 4725. **Form.** A mortgage of real property may be made in substantially the following form: § 1736, Civil C.

This mortgage made the day of, in the year by A. B., of, mortgagor, to C. D., of, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of dollars, on or before the day of, in the year with interest thereon (or as security for the payment of an obligation, describing it, etc.) A. B.

§ 4726. **When devisee must satisfy mortgage out of his property.** When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid. § 1737, Civil C.

§ 4727. **Executed, etc., like grant.** Mortgages of real property may be acknowledged or proved, certified and recorded in like manner and with like effect as grants thereof. § 1738, Civil C.

§ 4728. **To whom record notice.** The record of a mortgage duly made operates as notice to all subsequent purchasers and incumbrancers. § 1739, Civil C.

§ 4729. Separate paper showing grant intended as mortgage must be recorded. Every grant of real property or of any estate therein which appears by any other writing to be intended as a mortgage within the meaning of chapter 72 of this code must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together at the same time and place, the grantee can derive no benefit from such record.

§ 1741, CIVIL C.

§ 4730. Defeasance must be recorded. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees or persons having actual notice, unless an instrument of defeasance duly executed and acknowledged, shall have been recorded in the office of the register of deeds of the county where the property is situated.

ARTICLE 3. — MORTGAGE OF PERSONAL PROPERTY.

§ 1742, CIVIL C.

§ 4731. Form. A mortgage of personal property may be made in substantially the following form:

This mortgage made the day of, in the year by A. B., of, by occupation, mortgagor, to C. D., of, by occupation a, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of dollars on (or before) the day of, in the year, with interest thereon (or security for the payment of a note or obligation describing it, etc.) A. B.

§ 4732. Conditional sales must be in writing and filed. All reservations of the title to personal property, as security for the purchase money thereof, shall, when the possession of such property is delivered to the vendee, be void as to subsequent creditors without notice and purchasers and incumbrancers in good faith and for value, unless such reservation is in writing and filed and indexed the same as a mortgage of personal property. In indexing such instruments the register of deeds shall treat the purchaser as mortgagor and the vendor as mortgagee.

§ 1744, CIVIL C.

§ 4733. Void as to whom, unless filed. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value, unless the original or an authenticated copy thereof is filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated.

§ 1745, CIVIL C.

§ 4734. Filing, notice to whom. The filing of a mortgage of personal property in conformity with the provisions of this article operates as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the preceding section, situated in the county or counties wherein such mortgage or an authenticated copy thereof is filed.

§ 1746, CIVIL C.

§ 4735. Where property in transit deemed to be. For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor or to a location for use is during a reasonable time for transportation to be taken as situated in the county in which the mortgagor resides, or

where it is intended to be used. For a like purpose personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

§ 4736. Valid only as to property in county. Filing in other counties. A single mortgage of personal property embracing several things of such character, or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties is only valid in respect to the things as to which it is duly filed; but a copy of the original mortgage may be authenticated by the register of deeds in whose office it is filed, and such copy be filed in any other county with the same effect as to the property therein that the original could have been. § 1747, Civil C.

§ 4737. How renewed. A mortgage of personal property ceases to be valid as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith after the expiration of three years from the filing thereof, unless within ninety days next preceding the expiration of such term a copy of the mortgage and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien, sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds in the county in which the mortgage was originally filed and in like manner the mortgage and statement of debt must be again filed every three years or it ceases to be valid as against the parties above mentioned. § 1748, Civil C.
1, c. 25, 1881.
1, c. 41, 1890.
am'd.

§ 4738. How executed. A mortgage of personal property must be signed by the mortgagor in the presence of two persons who must sign the same as witnesses thereto and no further proof or acknowledgment is required to admit it to be filed. § 1749, Civil C.

§ 4739. Duty of register of deeds. Cancellation. The register of deeds of each of the several counties must receive and file all such instruments as are offered to him and must keep the same in his office in regular and orderly file for the public information and must not permit them, or any of them, to be removed from his office until canceled. Every such mortgage may be canceled by the register of deeds upon the presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof signed by the mortgagee. § 1750, Civil C.

§ 4740. Registry index. Every register of deeds with whom any such mortgage or authenticated copy thereof is filed must indorse a number upon the same in regular order together with the time of receiving the same and must enter the name of every party thereto in a book kept for that purpose alphabetically, placing mortgagors and mortgagees under a separate head and stating in separate columns, opposite each name, the number indorsed upon the mortgage, the date thereof and of the filing, the amount secured thereby, a brief of the substance thereof not otherwise entered and the time at which it is due. A mortgage is not to be deemed defectively filed by reason of any errors in the copy filed which do not tend to mislead a party interested; and the negligence of the officer with whom a mortgage is filed does not prejudice the rights of the mortgagee. § 1751, Civil C.

§ 4741. When mortgagee may take and dispose of property. If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and § 1752, Civil C.

dispose of the property as a pledge for the payment of the debt, though the debt is not due.

§ 1756, Civil C. **§ 4742. Where ship mortgage recorded.** No mortgage of any ship or vessel, or part thereof, of the United States shall be valid against any person, other than the mortgagor, his heirs and devisees and persons having actual notice thereof, unless such mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled.

§ 1756, Civil C. **§ 4743. Provisions inapplicable to ship mortgages.** Sections 4733 to 4741 inclusive of this article do not apply to any mortgage of a ship or vessel, or any part thereof, which is required as above by act of congress to be recorded in a particular place or manner.

CHAPTER 74.

PLEDGE.

§ 1757, Civil C. **§ 4744. Defined.** Pledge is a deposit of personal property by way of security for the performance of another act.

§ 1758, Civil C. **§ 4745. What contracts deemed pledge.** Every contract by which the possession of personal property is transferred as security only is to be deemed a pledge.

§ 1759, Civil C. **§ 4746. Lien dependent on possession.** The lien of a pledge is dependent on possession and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder as herein-after prescribed.

§ 1760, Civil C. **§ 4747. Includes increase.** The increase of property pledged is pledged with the property.

§ 1761, Civil C. **§ 4748. Lien may be pledged.** One who has a lien upon property may pledge it to the extent of his lien.

§ 1762, Civil C. **§ 4749. By one allowed to assume apparent ownership.** One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it cannot set up his own title to defeat a pledge of the property made by the other to a pledgee, who received the property in good faith in the ordinary course of business and for value.

§ 1763, Civil C. **§ 4750. To secure another's obligation.** Property may be pledged as security for the obligation of another person than the owner and in so doing the owner has all the rights of a pledgor for himself except as hereinafter stated.

§ 1764, Civil C. **§ 4751. Deposit with pledge holder.** A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

§ 1765, Civil C. **§ 4752. Withdrawal of property pledged for another.** One who pledges property as security for the obligation of another cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

§ 1766, Civil C. **§ 4753. Exoneration of pledge holder.** A pledge holder for reward cannot exonerate himself from his undertaking, and a gratuitous pledge holder can do so only by giving reasonable notice to the

pledgor and pledgee to appoint a new pledge holder and in case of their failure to agree by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

§ 4754. **Pledge holder must enforce pledgee's rights.** A § 1767, CIVIL C.
pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

§ 4755. **Liability of pledgee or pledge holder.** A pledgee, § 1768, CIVIL C.
or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

§ 4756. **Liability of gratuitous pledge holder.** A gratuitous § 1769, CIVIL C.
pledge holder assumes the duties and liabilities of a gratuitous depositary.

§ 4757. **Pledgee's rights on fraudulent misrepresentation of value.** § 1770, CIVIL C.
When a debtor has obtained credit, or an extension of time by a fraudulent misrepresentation of the value of the property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it is not actually due.

§ 4758. **Sale when performance due.** § 1771, CIVIL C.
When performance of the act for which a pledge is given is due in whole or in part, the pledgee may collect what is due him by a sale of the property pledged, subject to the rules and exceptions hereinafter prescribed.

§ 4759. **Demand necessary.** § 1772, CIVIL C.
Before property pledged can be sold and after performance of the act for which it is security is due the pledgee must demand performance thereof from the debtor, if the debtor can be found.

§ 4760. **Notice to pledgor of sale.** § 1773, CIVIL C.
A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold at such a reasonable time before the sale as will enable the pledgor to attend.

§ 4761. **Waiver of such notice.** § 1774, CIVIL C.
Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

§ 4762. **How demand waived.** § 1775, CIVIL C.
A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged by a positive refusal to perform after performance is due, but cannot waive it in any other manner except by contract.

§ 4763. **Sale by public auction.** § 1776, CIVIL C.
The sale by a pledgee of property pledged must be made by public auction in the manner and upon the notice to the public usual at the place of sale in respect to auction sales of similar property and must be for the highest obtainable price.

§ 4764. **Cannot sell evidence of debt. Exception.** § 1777, CIVIL C.
A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states or corporations; but he may collect the same when due.

§ 4765. **When pledgor may require sale.** § 1778, CIVIL C.
Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold and its proceeds to be applied to such satisfaction when due.

§ 4766. **Application of proceeds.** § 1779, CIVIL C.
After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds he may

deduct therefrom the amount due under the principal obligation and the necessary expenses of sale and collection; and must pay the surplus to the pledgor on demand.

§ 4767. **Same.** When property pledged is sold by order of the pledgor before the claim of the pledgee is due the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

§ 4768. **When pledgee cannot purchase.** A pledgee or pledge holder cannot purchase the property pledged except by direct dealing with the pledgor.

§ 4769. **Foreclosure.** Instead of selling property pledged as hereinbefore provided a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER 75.

BOTTOMRY.

§ 4770. **Defined.** Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage or period.

§ 4771. **Hypothecation by owner of ship.** The owner of a ship may hypothecate it or its freightage upon bottomry for any lawful purpose and at any time and place.

§ 4772. **By master for what only.** The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage or for securing the safety of the ship.

§ 4773. **Same; when only.** The master of a ship can hypothecate it upon bottomry only, when he cannot otherwise relieve the necessities of the ship and is unable to reach adequate funds of the owner or to obtain any upon the personal credit of the owner and when previous communication with him is precluded by the urgent necessity of the case.

§ 4774. **Hypothecation of freightage by master.** The master of a ship may hypothecate freightage upon bottomry under the same circumstances as those which authorize an hypothecation of the ship by him.

§ 4775. **Interest higher than legal rate.** Upon a contract of bottomry the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

§ 4776. **When enforceable, though unauthorized.** A lender upon a contract of bottomry made by the master of a ship as such may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if after due diligence and inquiry the lender had reasonable grounds to believe and did in good faith believe in the existence of such circumstances.

§ 4777. **Certain stipulation as to liability void.** A stipulation in a contract of bottomry imposing any liability for the loan independent of the maritime risks is void. § 1790, CIVIL C.

§ 4778. **Recovery in case of loss.** In case of a total loss of the thing hypothecated from a risk to which the loan was subject the lender upon bottomry can recover nothing; in case of a partial loss he can recover only to the extent of the net value to the owner of the part saved. § 1791, CIVIL C.

§ 4779. **When loan due.** Unless it is otherwise expressly agreed a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract. § 1792, CIVIL C.

§ 4780. **Lien lost by delay in enforcing.** A bottomry lien is independent of possession and is lost by omission to enforce it within a reasonable time. § 1793, CIVIL C.

§ 4781. **Preferred to all liens except what.** A bottomry lien, if created out of a real or apparent necessity in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of material men for supplies or repairs indispensable to the safety of the ship and a subsequent lien for salvage. § 1794, CIVIL C.

§ 4782. **When last preferred.** Of two or more bottomry liens on the same subject the latter in date has preference if created out of necessity. § 1795, CIVIL C.

CHAPTER 76.

RESPONDENTIA.

§ 4783. **Defined.** Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risk. § 1796, CIVIL C.

§ 4784. **Owner may hypothecate.** The owner of the cargo may hypothecate it upon respondentia at any time and place and for any lawful purpose. § 1797, CIVIL C.

§ 4785. **When master may.** The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies, which are necessary for the successful accomplishment of the voyage; and he cannot do so even in such case if there is no reasonable prospect of benefiting the cargo thereby. § 1798, CIVIL C.

§ 4786. **Other sections applicable.** The provisions of sections 4775 to 4782 apply equally to loans on respondentia. § 1799, CIVIL C.

§ 4787. **Owner of ship must repay owner of cargo.** The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay under a contract of respondentia made by the master in order to discharge its lien. § 1800, CIVIL C.

CHAPTER 77.

MECHANIC'S LIENS.

§ 655, C. Civ. P.
1. c. 99, 1887.
am'd.

§ 4788. Who may have and for what. Any person who shall perform any labor upon or furnish any materials, machinery or fixtures for the construction or repair of any work of internal improvement or for the erecting, alteration or repair of any building or other structures upon land, or in making any other improvement thereon, including fences, sidewalks, paving, wells, trees, drains, grades or excavations under a contract with the owner of such land, his agent, trustee, contractor or subcontractor, or with the consent of such owner, shall upon complying with the provisions of this chapter have for his labor done, or materials, machinery or fixtures furnished a lien upon such building, erection or improvement and upon the land belonging to such owner on which the same is situated, or to improve which the work was done or the things furnished, to secure the payment for such labor, materials, machinery or fixtures. The owner shall be presumed to have consented to the doing of any such labor or the making of any such improvement, if at the time he had knowledge thereof and did not give notice of his objection thereto to the person entitled to the lien. The provisions of this section and chapter shall not be construed to apply to claims or contracts for furnishing lightning rods or any of their attachments.

§ 4789. Single contract for several buildings. If labor is done or materials furnished under a single contract for several buildings, erections or improvements, the person furnishing the same shall be entitled to a lien therefor as follows:

1. If such buildings, erections or improvements are upon a single farm, tract or lot upon all such buildings, erections and improvements and the farm, tract or lot upon which the same are situated.

2. If such buildings, erections or improvements are upon separate farms, tracts or lots, upon all such buildings, erections and improvements and the farms, tracts or lots upon which the same are situated; but upon the foreclosure of such lien the court may in the cases provided for in this subdivision apportion the amount of the claim among the several farms, tracts or lots in proportion to the enhanced value of the same produced by means of such labor or materials, if such apportionment is necessary to protect the rights of third persons.

§ 657, C. Civ. P.
am'd.

§ 4790. On railway contracts. Every person who furnishes any labor, skill or material for constructing, altering or repairing any line of railway or any improvement or structure appertaining to any line of railway by virtue of any contract with the owner, his agent, contractor or subcontractor shall have a lien upon such line of railway and the right of way thereof and upon all bridges, depots, offices and other structures appertaining to such line of railway and all franchises, privileges and immunities granted to the owner of such line of railway for the construction and operation thereof to secure the payment for such labor, skill and materials upon filing a statement of his demand therefor in accordance with the provisions of the next section within ninety days from the last day of the month in which such labor or material was furnished; but a failure to file the same within the time aforesaid shall not defeat the lien except to the extent specified in the next section.

§ 4791. **Account to be filed with clerk.** Every person, who wishes to avail himself of the provisions of this chapter, shall file with the clerk of the district court of the county or judicial subdivision in which the property to be charged with the lien is situated and within ninety days after all the things aforesaid shall have been furnished or the labor done a just and true account of the demand due him after allowing all credits and containing a correct description of the property to be charged with such lien and verified by affidavit; but a failure to file the same within the time aforesaid shall not defeat the lien, except as against purchasers or incumbrancers in good faith and for value whose rights accrue after the ninety days and before any claim for the lien is filed, or as against the owner except the amount paid to the contractor after the expiration of the ninety days and before the filing of the same.

662, C. Civ. P.
am'd.

§ 4792. **Clerk's record of liens.** The clerk of the district court shall indorse upon every account the date of its filing and make an abstract thereof in a book to be kept by him for that purpose and properly indexed, containing the date of its filing, the name of the person filing the lien, the amount of such lien, the name of the person against whose property the lien is filed and a description of the property to be charged with the same.

§ 663, C. Civ. P.
am'd.

§ 4793. **Priority of mechanic's liens.** Liens under the provisions of this chapter shall have priority in the following order:

§ 664, C. Civ. P.
am'd.

1. For manual labor.
2. For materials.
3. Subcontractors, other than manual laborers.
4. Original contractors.

Liens in the same class filed within the ninety days shall share ratably in the security; but liens in the same class filed thereafter shall have priority in the order of the filing of the accounts thereof as aforesaid. Liens under the provisions of this chapter shall be preferred to all other liens or incumbrances upon such building, erection or other improvement and the land on which the same is situated, or to improve which the labor was done or things furnished, or either of them, filed or docketed subsequent to the commencement of such building, erection or other improvement.

§ 4794. **Land subject to lien.** The entire land upon which any such building, erection or other improvement is situated, or to improve which the labor was done or things furnished, including that portion of the same not covered therewith, shall be subject to all liens created by this chapter to the extent of all the right, title and interest owned therein by the owner thereof for whose immediate use or benefit such labor was done or things furnished and when the interest owned in such land by such owner of such building, erection or other improvement is only a leasehold interest, the forfeiture of such lease for the nonpayment of rent or for noncompliance with any of the other stipulations therein shall not forfeit or impair such lien so far as it concerns such buildings, erections and improvements, but the same may be sold to satisfy such lien and be removed within thirty days after the sale thereof by the purchaser.

§ 665, C. Civ. P.
am'd.

§ 4795. **When prior to prior lien on land. Power of court.** The liens for the things aforesaid or the work, including liens for additions, repairs and betterments shall attach to the building, erection or improvement for which they were furnished or done in preference to any prior lien or incumbrance or mortgage upon the

§ 666, C. Civ. P.
am'd.

land upon which such erection, building or improvement belongs or is erected or put.

If such material was furnished or labor performed in the erection or construction of an original and independent building, erection or other improvement commenced since the attaching of such prior lien, incumbrance or mortgage, the court may in its discretion order and direct such building, erection or improvement to be separately sold under execution and the purchaser may remove the same within such reasonable time as the court may fix. But if in the opinion of the court it would be for the best interest of all parties that the land and the improvements thereon should be sold together, it shall so order and the court shall take an account and ascertain the separate values of the land and of the erection, building or other improvement, and distribute the proceeds of sale so as to secure to the prior mortgage or other lien, priority upon the land, and to the mechanic's lien, priority upon the building, erection or other improvement.

If the material furnished or labor performed was for an addition to, repairs of or betterments upon buildings, erections or other improvements, the court shall take an account of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs or betterments, and upon the sale of the premises distribute the proceeds of sale so as to secure to the prior mortgage or lien priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien and to the mechanic's lien priority upon the enhanced value caused by such additions, repairs or betterments.

§ 667, C. Civ. P.
1, c. 83, 1883.
am'd.

§ 4796. Action to enforce. Fee for lien. Any person having a lien by virtue of this chapter may bring an action to enforce the same in the district court in the county or judicial subdivision in which the property is situated, and any number of persons claiming liens against the same property may join in the same action and when separate actions are commenced the court may consolidate them. Whenever in the sale of the property subject to the lien there is a deficiency of the proceeds, judgment may be entered for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages. The court shall also allow as part of the costs the money paid for filing each lien and the sum of five dollars for drawing the same.

§ 668, C. Civ. P.
am'd.

§ 4797. Requiring suit to be commenced. Assignment of claims. Upon the written demand of the owner, his agent or contractor, served on the person holding the lien, requiring him to commence suit to enforce such lien, such suit shall be commenced within thirty days thereafter, if the debt for which the lien is security is due and if not due, within thirty days after the same becomes due or the lien shall be forfeited. All claims for which liens may be or have been filed and rights of action to recover therefor under this chapter may be assigned by an instrument in writing and such assignment shall vest in the assignee all rights and remedies herein given, subject to all defenses that might have been interposed, if such assignment had not been made.

§ 669, C. Civ. P.

§ 4798. Owner defined. Every person for whose immediate use and benefit any building, erection or improvement is made, having the capacity to contract, including guardians of minors or other persons shall be included in the word "owner" thereof.

§ 4799. When discharge may be required. Penalty. § 670, C. Civ. P. am'd.
Whenever a lien has been claimed by filing the same in the clerk's office and it is afterwards paid, or more than thirty days have elapsed after the service of the demand mentioned in section 4797 without the commencement of an action to enforce the lien, the holder thereof shall upon demand of any person entitled to have such lien discharged and upon payment of the expenses thereof discharge the same, either on the proper book in such office or by an instrument acknowledged or proved in the same manner as the satisfaction of a mortgage, and if he neglects to do so for ten days after such demand, he shall forfeit one hundred dollars to the person entitled to such discharge and be liable to any person injured to the extent of the injury.

§ 4800. Subcontractor defined. § 671, C. Civ. P.
All persons furnishing things or doing work provided for by this chapter shall be considered subcontractors, except such as have therefor contracts directly with the owner, proprietor, his agent or trustee.

§ 4801. When taking collateral security does not impair right. The taking of collateral or other security for an indebtedness, for which a lien might be claimed under the provisions of this chapter, shall in no way impair the right to such lien, unless such security shall be by express agreement given and received in lieu of such lien.

CHAPTER 78.

BONDS FOR LABOR AND MATERIAL FOR PUBLIC BUILDINGS.

§ 4802. Bonds from contractors on public improvements. § 1, c. 111, 1890. am'd.
Whenever any public officer shall, under the laws of this state, enter into contract in any sum exceeding one hundred dollars, with any person for making any public improvements, or for constructing any public building, or making repairs on the same, such officer shall take from the party contracted with a bond, conditioned to the effect that such contractor shall pay all indebtedness incurred for labor or material furnished in the construction or repair of such public building or in making such public improvements.

§ 4803. How bond executed. § 2, c. 111, 1890. am'd.
Such bond shall run to the state of North Dakota, shall be executed by two or more sureties and shall be for an amount at least equal to the price stated in the contract. It shall be approved by the clerk of the district court of the county in which such building is to be constructed or such public improvement is to be made and the sureties thereon shall qualify in a sum equal to double the amount specified in the bond.

§ 4804. Where bond filed. Recovery on. § 3, c. 111, 1890. am'd.
Such bond shall be filed in the office of the clerk of the district court of the county in which such public improvement is to be made or such public building is to be erected; and any person to whom there is due any sum for labor or material furnished, as stated in section 4802, or his assigns, may bring an action on the bond for the recovery of such indebtedness; provided, that no action shall be brought on such bond unless commenced within one year from the completion of such public improvements, repairs or buildings.

CHAPTER 79.

MINER'S LIEN.

§ 1. c. 41, 1879.
am'd.

§ 4805. Lien for work or material furnished. Every miner or other person, who at the request of the owner, or his agent, of any lode, lead, ledge, mine or deposit bearing gold, cinnabar or copper, or of any coal bank or mine, or at the request of any contractor or subcontractor, shall perform any labor whatever on such mine or furnish any timber, rope, nails or any other materials for timbering shafts or levels for the mine owned by such owner, or who shall furnish any kind of materials for erecting any windlass, whims or any other hoisting apparatus or machinery, or for any car track, cars, tunnels, drifts or openings thereon, or shall perform any labor in any tunnel shall have a lien upon such lode, lead, ledge, mine, deposit, bank or tunnel to secure the payment of the same.

§ 2. c. 41, 1879.
am'd.

§ 4806. Attested account to owner. Amount of claim deducted from payment to contractor. Any miner or other person doing and performing any work or furnishing any material as specified in the last section, under a contract either express or implied between the owner of any mine or his 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 of such mine or tunnel or to his agent or superintendent, an attested account of the amount in value of the work and labor thus performed or of the materials thus furnished and remaining unpaid, and thereupon such owner or his 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.

§ 3. c. 41, 1879.
am'd.

§ 4807. Duty of owner when account 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 of any mine or tunnel or his agent, it shall be the duty of such owner or agent to furnish such contractor with a copy of such papers, so that if there is any disagreement between such contractor or his subcontractor 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 subcontractor shall not within ten days after the receipt of such papers give such owner or his 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 his 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 subcontractor in case such account or demand is against such subcontractor for work and labor performed or materials furnished as aforesaid.

§ 4. c. 41, 1879.
am'd.

§ 4808. Amount due contractors recovered from owner. The amount which may be due from any contractor to his creditor may be recovered from such owner by the creditor of such contractor

in an action at law to the extent in value of any balance due by the owner to his 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.

§ 4809. Account to be made and filed with clerk. Any person entitled to a lien under this chapter 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 or furnishing the last item of machinery, materials or other things, file the same in the office of the clerk of the district 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 material shall have been furnished; and also file at the same time a correct description of the property to be charged with such 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 of furnishing the last item of machinery or material, 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 such 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 the proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale.

§ 4810. Foreclosure. Any person holding such lien may foreclose the same in the same manner as a mechanic's lien; but in all actions instituted for the foreclosure of such lien, all persons claiming liens upon the property charged shall be made parties to such action, and the rights of all parties shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all parties.

§ 4811. Satisfaction must be granted when lien paid. Any person who shall have filed his account and perfected his lien under the provisions of this chapter 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 persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect, if he shall have been requested in such case to enter satisfaction as aforesaid.

§ 4812. Chapter applies to oil wells, etc. The provisions of this chapter 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.

CHAPTER 80.

LIENS FOR KEEPING AND PASTURING STOCK.

§ 672, C. Civ. P. **§ 4813. Who may have.** Any farmer, ranchman or herder of cattle, tavern keeper or livery stable keeper, to whom any horses, mules, cattle or sheep shall be intrusted for the purpose of feeding, herding, pasturing or ranching shall have a lien upon said horses, mules, cattle or sheep for the amount that may be due for such feeding, herding, pasturing or ranching, and shall be authorized to retain possession of such horses, mules, cattle or sheep until the said amount is paid; provided, that these provisions shall not be construed to apply to stolen stock.

§ 673, C. Civ. P. **§ 4814. Lien only against owner.** The provisions of this chapter shall not be construed to give any farmer, ranchman or herder of cattle, tavern keeper or livery stable keeper any lien upon horses, mules, cattle or sheep put into their keeping for the purposes mentioned in the previous section, when said property was not owned by the person intrusting the same at the time of delivering them into the possession of said farmer, ranchman, herder, tavern keeper or livery stable keeper.

§ 4815. Priority over other liens. Such lien shall have priority over all other liens on such property for ten days after the receipt of the same and shall thereafter have priority over all other liens on such property, if the person to whom such property is intrusted as in this chapter provided shall within such ten days:

1. Serve upon the holder of an earlier lien upon such property, if known and a resident of this state, written notice that such property has been intrusted to him for some one of the purposes mentioned in section 4813, specifying which, and by whom; or,

2. If the residence of the holder of any such lien is unknown or he is not a resident of this state, publish for one week in some newspaper published in the county in which such property is being kept and if there is no such newspaper then in a newspaper published at the seat of government, a notice of the kind provided for in subdivision 1 of this section.

CHAPTER 81.

LIEN FOR SIRES.

§ 1, c. 117, 1891, am'd. **§ 4816. Filing statement of pedigree prerequisite.** Every owner of a sire charging a service fee, in order to have a lien for service upon the offspring of any such sire under the provisions of this chapter, shall file a statement, verified by oath, to the best of his knowledge and belief with the commissioner of agriculture and labor giving the name, age, description and pedigree, or breeding of such sire, so far as known, as well as the terms and conditions upon which he is advertised for service.

§ 4817. **Certificate of commissioner of agriculture. Filing and posting.** The commissioner of agriculture and labor upon receipt of the statement specified in the last section, and also of a certificate of registry of such sire in any society for the purpose of registry of sires, duly verified by affidavit shall issue a certificate to the owner thereof, a copy of which shall be filed in the office of the clerk of the district court of the county or counties in which such sire shall stand for service and shall also be posted conspicuously in all places where such sire shall stand for service, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the sire is advertised for service and that the provisions of this chapter so far as relates to the filing of the statement aforesaid have been complied with. § 2, c. 117, 1891.
am'd.

§ 4818. **Procedure to obtain lien.** The owner of any sire receiving such certificate shall have a lien upon the offspring of such sire and upon the female served, upon filing at any time within eight months after the service in the office of the register of deeds of the county in which such female was kept at the time of the service, a statement of the account thereof together with a description of the female served. Such lien shall exist for a period of three years from the filing of the statement and shall have priority over all other liens and incumbrances upon the offspring of the female served. § 3, c. 117, 1891.
am'd.

§ 4819. **Foreclosure.** After the expiration of nine months from the filing of the lien, or at any time after an attempt shall be made to dispose of the female or remove her from the county, the lien may be foreclosed by a sale of the property covered thereby, upon the notice and in the manner provided for the foreclosure of mortgages upon personal property and the costs and fees for such foreclosure shall be the same as are provided in section 5892 of the code of civil procedure. § 6, c. 117, 1891.
am'd.

CHAPTER 82.

SEED LIEN.

§ 4820. **Who may have.** Any person who shall furnish to another seed to be sown or planted upon lands owned, used, occupied or rented by him shall, upon filing the statement provided for in the next section, have a lien upon the crop produced from the seed so furnished to secure the payment of the purchase price thereof. § 1, c. 150, 1887.
am'd.

§ 4821. **Procedure to obtain lien.** Any person entitled to a lien under this chapter shall within thirty days after the seed is furnished file in the office of the register of deeds of the county in which the seed is to be sown or planted a statement in writing, verified by oath, showing the kind and quantity of seed, its value, the name of the person to whom furnished and a description of the land upon which the same is to be or has been planted or sown. Unless the person entitled to the lien shall file such statement within the time aforesaid he shall be deemed to have waived his right thereto. § 3, c. 150, 1887.
am'd.

§ 4822. **Priority.** The lien given by this chapter, shall, as to the crops covered thereby, have priority over all other liens and incumbrances thereon except liens given by chapter 83. § 2, c. 150, 1887.
am'd.

CHAPTER 83.

THRESHING LIEN.

§ 1, c. 88, 1889,
am'd.

§ 4823. Who may have. Any owner or lessee of a threshing machine who threshes grain for another therewith shall, upon filing the statement provided for in the next section, have a lien upon such grain for the value of his services in threshing the same from the date of the commencement of the threshing.

§ 3, c. 88, 1889,
am'd.

§ 4824. Procedure to obtain lien. Any person entitled to a lien under this chapter shall, within thirty days after the threshing is completed, file in the office of the register of deeds of the county in which the grain was grown a statement in writing, verified by oath, showing the amount and quantity of grain threshed, the price agreed upon for threshing the same, the name of the person for whom the threshing was done and a description of the land upon which the grain was grown. Unless the person entitled to the lien shall file such statement within the time aforesaid he shall be deemed to have waived his right thereto.

§ 2, c. 88, 1889,
§ 1, c. 87, 1890,
am'd.

§ 4825. Priority. Such lien shall have priority over all other liens and incumbrances upon such grain.

CHAPTER 84.

FARM LABORER'S LIEN.

§ 1, c. 63, 1895.

§ 4826. Who may have. Any person who performs services for another in the capacity of farm laborer between the first day of April and the first day of December in any year, shall have a lien on all crops of every kind grown, raised or harvested by the person for whom the services were performed during said time as security for the payment of any wages due or owing to such person for services so performed, and said lien shall have priority over all other liens, chattel mortgages or incumbrances, excepting, however, seed grain and thresher's liens; provided, however, that, the wages for which a lien may be obtained must be reasonable and not in excess of that which is usually charged for the same kind of work in the locality where the labor is performed; provided, further, that in case any such person without cause quits his employment before the expiration of the time for which he is employed, or if he shall be discharged for cause, then he shall not be entitled to a lien as herein provided.

§ 2, c. 63, 1895.

§ 4827. How lien obtained. In order to acquire a lien as specified in section 4826 of this chapter, the person performing such services shall, within ten days after the services are fully performed, file in the office of the register of deeds of the county in which any of the real estate is situated, on which any crop is grown on which a lien is claimed, an affidavit and notice setting forth the terms of the employment, the name of the employer, the time when the services were commenced and when ended, the wages agreed upon if any, and

if not agreed upon then the reasonable value of the same, the terms of payment if any and a description of the real estate on which any crop is grown or has been grown or harvested on which a lien is claimed, the amount paid him if any and the amount remaining unpaid and that said laborer claims a lien for the same.

§ 4828. Duty of register. It shall be the duty of the register of deeds to file and enter said affidavit and notice in the manner required by law for filing and entering chattel mortgages, entering employers as mortgagors and laborers as mortgagees, and shall be entitled to a fee of ten cents for filing the same. § 3, c. 63, 1895.

§ 4829. Penalty for disposing of property covered by. If the person for whom such services were performed fails to pay for the same when due, or if he shall sell, conceal or dispose of the property covered by said lien or any part thereof, then the owner of such lien shall have the right to take full and absolute possession of all the property covered by such lien and sell the same in the same manner and upon the notice provided by law for the foreclosure of chattel mortgages and the cost and fees for foreclosing shall be the same. § 4, c. 63, 1895.

CHAPTER 85.

OTHER LIENS.

§ 4830. Vendor's lien on realty. One who sells real property has a special or vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer. § 1801, Civil C.

§ 4831. When lien waived. When a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller, waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts and return the surplus is not a waiver of the lien. § 1802, Civil C.

§ 4832. Certain liens subject to creditor's rights. The liens defined in sections 4830 and 4834 shall be subject to the rights of subsequent creditors without notice, or purchasers or incumbrancers in good faith and for value. § 1803, Civil C. am'd.

§ 4833. Vendor's lien on personalty. One who sells personal property has a special lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price. § 1804, Civil C.

§ 4834. Purchaser's lien on realty. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back in case of a failure of consideration. § 1805, Civil C.

§ 4835. Lien for improvement, carriage, etc., of personalty. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by § 1806, Civil C.

labor or skill employed for the protection, improvement, safe-keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.

§ 1807, Civil C. § **4836. Factor's lien.** A factor has a general lien dependent on possession for all that is due to him as such upon all articles of commercial value that are intrusted to him by the same principal.

§ 1808, Civil C. § **4837. Banker's lien.** A banker has a general lien dependent on possession upon all property in his hands belonging to a customer for the balance due to him from such customer in the course of the business.

§ 1809, Civil C. § **4838. Shipmaster's lien.** The master of a ship has a general lien independent of possession upon the ship and freightage for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

§ 1810, Civil C. § **4839. Mate and seaman's lien for wages.** The mate and seamen of a ship have a general lien independent of possession upon the ship and freightage for their wages, which is superior to every other lien.

§ 1811, Civil C. § **4840. Officer's lien in attachment or execution.** An officer who levies an attachment or execution upon personal property acquires a special lien dependent on possession upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

§ 1062, Civil C.
am'd. § **4841. Lien of hotel keepers, etc.** Hotel, inn, boarding house and lodging house keepers shall have a lien upon the baggage and other property of their guests, boarders or lodgers, brought into such hotel, inn, boarding or lodging house by such guests, boarders or lodgers for the proper charges due from such guests, boarders or lodgers for their accomodation, board and lodging and room rent and such extras as are furnished at their request and the right to the possession of such baggage or other property until all such charges are paid.

§ 9, c. 18, Pol. C. § **4842. 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 the 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.

§ 10, c. 18, Pol. C. § **4843. Release 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.

§ 4844. Lien for repairs of personalty. A person who makes, alters or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. § 1814, Civil C. am'd.

CHAPTER 86.

FILING AND FORECLOSING LIENS ON PERSONAL PROPERTY.

§ 4845. How liens foreclosed. Upon default being made in the payment of a debt secured by a lien upon personal property such lien may be foreclosed upon the notice and in the manner provided for the foreclosure of mortgages upon personal property and the holder of such lien shall be entitled to the possession of the property covered thereby for the purpose of foreclosing the same. The costs and fees for such foreclosure shall be the same as are provided in section 5892 of the code of civil procedure. No report of such foreclosure need be made or filed. Such liens may also be foreclosed by action as provided in chapter 28 of the code of civil procedure.

§ 4846. Duty of register of deeds as to liens filed. It shall be the duty of the register of deeds to file and index any statement or lien upon personal property, required by law to be filed in his office, the same as a mortgage upon personal property, the person filing the lien being treated as mortgagee and the person against whom the lien is filed as mortgagor.

CHAPTER 87.

STOPPAGE IN TRANSIT.

§ 4847. When authorized. A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof. § 1815, Civil C.

§ 4848. Insolvency defined. A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so. § 1816, Civil C.

§ 4849. When transit ends. The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee. § 1817, Civil C.

- § 1818, CIVIL C. **§ 4850. How effected.** Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.
- § 1819, CIVIL C. **§ 4851. Not rescission of sale.** Stoppage in transit does not of itself rescind a sale, but is a means of enforcing the lien of the seller.

CHAPTER 88.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE 1. — GENERAL DEFINITIONS.

- § 1820, CIVIL C. **§ 4852. What chapters apply to this article.** The provisions of chapters 88 to 92 inclusive of this code apply only to negotiable instruments as defined in this article.
- § 1821, CIVIL C. **§ 4853. Negotiable instrument defined.** A negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this article.
- § 1822, CIVIL C. **§ 4854. Payable in money. Must be certain.** A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.
- § 1823, CIVIL C. **§ 4855. Payee must be ascertainable.** The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.
- § 1824, CIVIL C. **§ 4856. Option to pay money or perform other act.** A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter the instrument is not within the provisions of chapters 88 to 92 of this code.
- § 1825, CIVIL C. **§ 4857. With or without date, etc.** A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.
- § 1826, CIVIL C.
am'd. **§ 4858. May contain what contracts.** A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof, or an agreement to pay the current rate of exchange on a place other than the place of payment.
- § 1827, CIVIL C. **§ 4859. May not contain what.** A negotiable instrument must not contain any other contract than such as is specified in this article.
- § 1828, CIVIL C. **§ 4860. Any date may be inserted.** Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.
- § 1829, CIVIL C. **§ 4861. Negotiable instruments classified.** There are six classes of negotiable instruments, namely:

1. Bills of exchange.
2. Promissory notes.
3. Bank notes.
4. Checks.
5. Bonds.
6. Certificates of deposit.

ARTICLE 2.—INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

§ 4862. **When payable.** A negotiable instrument which does not specify the time of payment is payable immediately. § 1830, Civil C.

§ 4863. **Where payable.** A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever he may be found. § 1831, Civil C.

§ 4864. **To whom payable.** An instrument otherwise negotiable in form, payable to a person named, but adding the words "or to his order," or "or to bearer," or words equivalent thereto, is in the former case payable to the written order of such person and in the latter case payable to the bearer. § 1832, Civil C.

§ 4865. **Effect of payee being maker or fictitious.** A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement has the same effect against him and all other persons having notice of the facts, as if payable to the bearer. § 1833, Civil C.

§ 4866. **Payable to bearer if payee fictitious.** A negotiable instrument, made payable to the order of a person obviously fictitious is payable to the bearer. § 1834, Civil C.

§ 4867. **Signature presumed to be for consideration.** The signature of every drawer, acceptor and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument and in the ordinary course of business. § 1835, Civil C.

ARTICLE 3.—INDORSEMENT.

§ 4868. **Indorser defined.** One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon to another person, is called an indorser, and his act is called indorsement. § 1836, Civil C.

§ 4869. **Obligation from agreement to indorse.** One who agrees to indorse a negotiable instrument, is bound to write his signature upon the back of the instrument if there is sufficient space thereon for that purpose. § 1837, Civil C.

§ 4870. **On annexed paper.** When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto. § 1838, Civil C.

§ 4871. **Classified.** An indorsement may be general or special. § 1839, Civil C.

§ 4872. **General.** A general indorsement is one by which no indorsee is named. § 1840, Civil C.

§ 4873. **Special.** A special indorsement specifies the indorsee. § 1841, Civil C.

§ 4874. **When general changed to special.** A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement

into a special one by writing above it a direction for payment to a particular person.

§ 1843, CIVIL C. § 4875. **Special may destroy negotiability.** A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

§ 1844, CIVIL C. § 4876. **Warranties implied.** Every indorser of a negotiable instrument warrants to every subsequent holder thereof who is not liable thereon to him:

1. That it is in all respects what it purports to be.
2. That he has a good title to it.
3. That the signatures of all prior parties are binding upon them.
4. That if the instrument is dishonored, the indorser will upon notice thereof duly given to him, or without notice, when it is excused by law, pay the same in full with interest, unless exonerated under the provisions of sections 4926, 4963 or 4965.

§ 1845, CIVIL C. am'd. § 4877. **Liability of indorser before delivery.** One who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon as an indorser.

§ 1846, CIVIL C. § 4878. **"Without recourse."** An indorser may qualify his indorsement with the words "without recourse," or equivalent words: and upon such indorsement he is responsible only to the same extent as in the case of a transfer without indorsement.

§ 1847, CIVIL C. § 4879. **Effect of.** Except as otherwise prescribed by the last section an indorsement without recourse has the same effect as any other indorsement.

§ 1848, CIVIL C. § 4880. **Liability of prior indorser.** An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

§ 1849, CIVIL C. § 4881. **Indorser has rights of guarantor.** An indorser has all the rights of a guarantor as defined by the chapter on guaranty in general and is exonerated from liability in like manner.

§ 1850, CIVIL C. § 4882. **Accommodation indorser has rights of surety.** One who indorses a negotiable instrument at the request and for the accommodation of another party to the instrument has all the rights of a surety as defined by the chapter on suretyship and is exonerated in like manner in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers.

§ 1851, CIVIL C. § 4883. **Want of consideration does not affect indorsee in good faith.** The want of consideration for the undertaking of a maker, acceptor or indorser of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

§ 1852, CIVIL C. am'd. § 4884. **Indorsee in due course defined.** An indorsee in due course is one who in good faith in the ordinary course of business and for value before its apparent maturity or presumptive dishonor and without knowledge of its actual dishonor acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer, or one other than the payee, who acquires such an instrument of such an indorsee thereof.

§ 1853, CIVIL C. § 4885. **Such indorsee acquires absolute title.** An indorsee of a negotiable instrument in due course acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

§ 4886. Liability on instrument wholly or partly blank. § 1854, Civil C.

One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course in whatever manner and at whatever time it may be filled so long as it remains negotiable in form.

ARTICLE 4. — PRESENTMENT FOR PAYMENT.**§ 4887. Demand unnecessary. What equivalent to offer.** § 1855, Civil C.

It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

§ 4888. How presentment made. Presentment of a negotiable instrument for payment when necessary must be made as follows as nearly as by reasonable diligence it is practicable:

1. The instrument must be presented by the holder.
2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made and if not, then it must be presented to some other person having charge thereof or employed therein, if one can be found there.
3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein.
4. An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter; and,
5. The instrument must be presented upon the day of its maturity, or if it is payable on demand it may be presented on any day. It must be presented within reasonable hours; and if it is payable at a banking house, within the usual banking hours of the vicinity, but by the consent of the person to whom it should be presented it may be presented at any hour of the day.
6. If the principal debtor has no place of business or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused.

§ 4889. Apparent maturity. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due; or when that is a holiday, the next business day. § 1857, Civil C.

§ 4890. When dishonor presumed. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date in addition to the time which would suffice with ordinary diligence to forward it for acceptance, is presumed to have been dishonored. § 1858, Civil C.

§ 4891. Apparent maturity of bill of exchange. The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,
2. If it does not bear interest, ten days after its date in addition to the time which would suffice with ordinary diligence to forward it for acceptance.

- § 1860, Civil C. **§ 4892. Of promissory note.** The apparent maturity of a promissory note, payable at sight or on demand, is:
1. If it bears interest, one year after its date; or,
 2. If it does not bear interest, six months after its date.
- § 1861, Civil C. **§ 4893. When time added.** When a promissory note is payable at a certain time after sight or demand such time is to be added to the periods mentioned in the last section.
- § 1862, Civil C. **§ 4894. Conditions, concurrent to payment.** A party to a negotiable instrument may require as a condition concurrent to its payment by him:
1. That the instrument be surrendered to him, unless it is lost or destroyed or the holder has other claims upon it; or,
 2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,
 3. If the instrument is lost or destroyed, then that the holder give to him a bond executed by himself and two sufficient sureties to indemnify him against any lawful claim thereon.

ARTICLE 5.—DISHONOR OF NEGOTIABLE INSTRUMENTS.

- § 1863, Civil C. **§ 4895. Defined.** A negotiable instrument is dishonored when it is either not paid or not accepted, according to its tenor, on presentment for the purpose, or without presentment when that is excused.
- § 1864, Civil C. **§ 4896. How notice of given.** Notice of the dishonor of a negotiable instrument may be given:
1. By a holder thereof; or,
 2. By any party to the instrument who might be compelled to pay it to the holder and who would upon taking it up have a right to reimbursement from the party to whom the notice is given.
- § 1865, Civil C. **§ 4897. Form of notice.** A notice of dishonor may be given in any form which describes the instrument with reasonable certainty and substantially informs the party receiving it that the instrument has been dishonored.
- § 1866, Civil C. **§ 4898. How notice served.** A notice of dishonor may be given:
1. By delivering it to the party to be charged personally at any place; or,
 2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,
 3. 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 post office most conveniently accessible from the place where the presentment was made and paying the postage thereon.
- § 1867, Civil C. **§ 4899. How notice served after death.** In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or if there is none, then it must be mailed to his last place of residence as prescribed by subdivision 3 of the last section.
- § 1868, Civil C. **§ 4900. When service after death valid.** A notice of dishonor sent to a party after his death, but in ignorance thereof and in good faith, is valid.

§ 4901. **When given, if not by mail.** Notice of dishonor when given by the holder of an instrument, or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter. § 1869, Civil C.

§ 4902. **Requisites of giving by mail.** When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor and which leaves the place where the instrument was dishonored for the place to which the notice should be sent. § 1870, Civil C.

§ 4903. **Notice by agent.** When the holder of a negotiable instrument at the time of its dishonor is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser and his principal may give notice to any other party to be charged, as if he was himself an indorser. And if an agent of the owner employs a subagent, it is sufficient for each successive agent or subagent to give notice in like manner to his own principal. § 1871, Civil C.

§ 4904. **Time for giving notice to prior parties.** Every party to a negotiable instrument receiving notice of its dishonor has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto. § 1872, Civil C.

§ 4905. **Notice benefits all parties.** A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost. § 1873, Civil C.

ARTICLE 6. — EXCUSE OF PRESENTMENT AND NOTICE.

§ 4906. **What excuses notice of dishonor.** Notice of dishonor is excused: § 1874, Civil C.

1. When the party by whom it should be given cannot with reasonable diligence ascertain either the place of residence or business of the party to be charged; or,

2. When there is no post office communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto.

§ 4907. **What excuses presentment and notice.** Presentment and notice are excused as to any party to a negotiable instrument who informs the holder within ten days before its maturity, that it will be dishonored. § 1875, Civil C.

§ 4908. **Security excuses.** If before or after the maturity of an instrument an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused. § 1876, Civil C.

§ 4909. **Delay excused by what was unavoidable.** Delay in presentment or in giving notice of dishonor is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence. § 1877, Civil C.

- § 1878, Civil C. **§ 4910. Waiving presentment waives notice.** A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.
- § 1879, Civil C. **§ 4911. Waiving protest waives presentment and notice.** A waiver of protest on any negotiable instrument, other than a foreign bill of exchange waives presentment and notice.

ARTICLE 7. — EXTINCTION OF NEGOTIABLE INSTRUMENTS.

- § 1880, Civil C. **§ 4912. How obligation extinguished.** The obligation of a party to a negotiable instrument is extinguished:
1. In like manner with that of parties to contracts in general; or,
 2. By payment of the amount due upon the instrument at or after its maturity in good faith and in the ordinary course of business to any person having actual possession thereof and appearing by its terms to be entitled to payment.
- § 1881, Civil C. **§ 4913. How obligation revived.** If after its extinction a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor.

CHAPTER 89.

BILLS OF EXCHANGE.

ARTICLE 1. — FORM AND INTERPRETATION OF A BILL.

- § 1882, Civil C. **§ 4914. Defined.** A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another called the drawee to pay a specified sum of money.
- § 1883, Civil C. **§ 4915. Additional drawee.** A bill of exchange may give the name of any person in addition to the drawee to be resorted to in case of need.
- § 1884, Civil C. **§ 4916. Drawn in parts.** A bill of exchange may be drawn in any number of parts, each part stating the existence of the others and all forming one set.
- § 1885, Civil C. **§ 4917. Bound to execute in three parts.** An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.
- § 1886, Civil C. **§ 4918. Presentment, etc., of one sufficient.** Presentment, acceptance or payment of a single part in a set of a bill of exchange is sufficient for the whole.
- § 1887, Civil C. **§ 4919. Where payable.** A bill of exchange is payable:
1. At the place where by its terms it is made payable; or,
 2. If it specifies no place of payment, then at the place to which it is addressed; or,
 3. If it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or

residence cannot with reasonable diligence be ascertained, presentment for payment is excused and the bill may be protested for non-payment.

§ 4920. **Drawer's rights.** The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument. § 1888, Civil C.

ARTICLE 2. — DAYS OF GRACE.

§ 4921. **No days of grace.** Days of grace are not allowed. § 1889, Civil C. am'd.

ARTICLE 3. — PRESENTMENT FOR ACCEPTANCE.

§ 4922. **When presented. Refusal dishonors bill.** At any time before a bill of exchange is payable the holder may present it to the drawee for acceptance and if the acceptance is refused the bill is dishonored. § 1890, Civil C.

§ 4923. **How made.** Presentment for acceptance must be made in the following manner as nearly as by reasonable diligence it is practicable: § 1891, Civil C.

1. The bill must be presented by the holder or his agent.

2. It must be presented on a business day and within reasonable hours.

3. It must be presented to the drawee, or, if he is absent from his place of residence or business, to some person having charge thereof or employed therein; and,

4. The drawee on such presentment may postpone his acceptance or refusal until the next day. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for acceptance is excused and the bill may be protested for nonacceptance.

§ 4924. **Excused as to others if refused by one.** Presentment for acceptance to one of several joint drawees and refusal by him dispenses with presentment to the others. § 1892, Civil C.

§ 4925. **Not dishonored without presentment to drawee in need.** A bill of exchange which specifies a drawee in case of need must be presented to him for acceptance or payment as the case may be, before it can be treated as dishonored. § 1893, Civil C.

§ 4926. **Of bill payable specified time after sight.** When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice with ordinary diligence to forward it for acceptance, unless presentment is excused. § 1894, Civil C.

ARTICLE 4. — ACCEPTANCE.

§ 4927. **Must be in writing.** An acceptance of a bill must be made in writing by the drawee or by an acceptor for honor; and may be made by the acceptor writing his name across the face of the bill with or without other words. § 1895, Civil C.

§ 4928. **May be treated as dishonored if acceptance qualified.** The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored, if the drawee refuses to write across its face an unqualified acceptance. § 1896, Civil C.

- § 1897, Civil C. **§ 4929. What sufficient acceptance.** The holder of a bill of exchange may without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:
1. An acceptance written upon any part of the bill, or upon a separate paper.
 2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable.
 - 3. A refusal by the drawee to return the bill to the holder after presentment; in which case the bill is payable immediately without regard to its terms.
- § 1898, Civil C. **§ 4930. When acceptance upon separate instrument binding.** The acceptance of a bill of exchange by a separate instrument binds the acceptor to one, who upon the faith thereof has the bill for value or other good consideration.
- § 1899, Civil C. **§ 4931. When unconditional promise to accept sufficient.** An unconditional promise in writing to accept a bill of exchange is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.
- § 1900, Civil C. **§ 4932. When acceptance may be canceled.** The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder and before the holder has with the consent of the acceptor transferred his title to another person who has given value for it upon the faith of such acceptance.
- § 1901, Civil C. **§ 4933. What acceptance admits.** The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

ARTICLE 5. — ACCEPTANCE OR PAYMENT FOR HONOR.

- § 1902, Civil C. **§ 4934. When.** On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill after it has been duly protested, it may be accepted or paid by any person for the honor of any party thereto.
- § 1903, Civil C. **§ 4935. Holder is bound to accept payment but not acceptance.** The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.
- § 1904, Civil C. **§ 4936. How made. Reimbursement.** An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays and must give notice to such parties with reasonable diligence of the fact of such acceptance or payment. Having done so he is entitled to reimbursement from such parties and from all parties prior to them.
- § 1905, Civil C. **§ 4937. Presentment and notice of dishonor of bill so accepted.** A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill.
- § 1906, Civil C. **§ 4938. Acceptance does not excuse notice.** The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE 6. — PRESENTMENT FOR PAYMENT.

§ 4939. **At place specified by bill.** If a bill of exchange is by its terms payable at a particular place and is not accepted on presentment, it must be presented at the same place for payment when presentment for payment is necessary. § 1907, CIVIL C.

§ 4940. **At place fixed by acceptance.** A bill of exchange, accepted payable at a particular place, must be presented at that place for payment when presentment for payment is necessary and need not be presented elsewhere. § 1908, CIVIL C.

§ 4941. **Of bill payable at sight.** If a bill of exchange payable at sight or on demand without interest is not duly presented for payment within ten days after the time in which it could with reasonable diligence be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused. § 1909, CIVIL C.

§ 4942. **Mere delay does not exonerate.** Mere delay in presenting a bill of exchange payable with interest at sight or on demand does not exonerate any party thereto. § 1910, CIVIL C.

ARTICLE 7. — EXCUSE OF PRESENTMENT AND NOTICE.

§ 4943. **Incapacity to accept.** The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it. § 1911, CIVIL C.

§ 4944. **Delay from uncontrollable cause.** Delay in the presentment of a bill of exchange for acceptance is excused when caused by circumstances over which the holder has no control. § 1912, CIVIL C.

§ 4945. **By drawee's forbidding acceptance and payment.** Presentment of a bill of exchange for acceptance or payment and notice of its dishonor are excused as to the drawer if he forbids the drawee to accept or the acceptor to pay the bill; or if at the time of drawing he had no reason to believe that the drawee would accept or pay the same. § 1913, CIVIL C.

ARTICLE 8. — FOREIGN BILLS.

§ 4946. **Inland bill defined.** An inland bill of exchange is one drawn and payable within this state. All others are foreign. § 1914, CIVIL C.

§ 4947. **Notice of dishonor only by protest.** Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest. § 1915, CIVIL C.

§ 4948. **Protest made by whom.** Protest must be made by a notary public if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses. § 1916, CIVIL C.

§ 4949. **Form of protest.** Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange with all that is written thereon, or annexing the original; stating the presentment and the manner in which it was made, the presence or absence of the drawee or acceptor, as the case may be, the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally protesting against all the parties to be charged. § 1917, CIVIL C.

- § 1918, Civil C. **§ 4950. Where protest made.** A protest for nonacceptance must be made in the city or town in which the bill is presented for acceptance and a protest for nonpayment, in the city or town in which it is presented for payment.
- § 1919, Civil C. **§ 4951. When protest must be noted.** A protest must be noted on the day of the presentment or on the next business day, but it may be written out at any time thereafter.
- § 1920, Civil C. **§ 4952. Protest by what excused.** The want of protest of a foreign bill of exchange or delay in making the same is excused in like cases with the want or delay of presentment.
- § 1921, Civil C. **§ 4953. Notice of, how given.** Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.
- § 1922, Civil C. **§ 4954. When notice of dishonor same as inland bill.** If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto in like manner as of an inland bill, except that if any indorser of such a bill expressly requires protest to be made by a direction written on the bill at or before his indorsement, protest must be made and notice thereof given to him and to all subsequent indorsers.
- § 1923, Civil C. **§ 4955. Requisites to reimbursement on payment for dishonor.** One who pays a foreign bill of exchange for honor must declare before payment in the presence of a person authorized to make protest for whose honor he pays the same in order to entitle him to reimbursement.
- § 1924, Civil C. **§ 4956. To whom and when damages allowed.** Damages are allowed as hereinafter prescribed as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses and all other damages in favor of holders for value only upon bills of exchange drawn or negotiated within this state and protested for nonacceptance or nonpayment.
- § 1925, Civil C. **§ 4957. Rates of damages.** Damages are allowed under the last section upon bills drawn upon any person:
1. If drawn upon any person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill.
 2. If drawn upon any person out of this state, but in the states of Nebraska, Iowa, Minnesota, South Dakota, Wisconsin, Illinois, Missouri and Montana, three dollars upon each one hundred dollars of the principal sum specified in the bill.
 3. If drawn upon any person in any of the United States or territories other than those above named, five dollars upon each one hundred dollars of the principal sum specified in the bill.
 4. If drawn upon any person in any place in a foreign country, ten dollars upon each one hundred dollars of the principal sum specified in the bill.
- And from the time of notice of dishonor and demand of payment lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill and the damages mentioned as above.
- §§ 1926, 1927, Civil C. **§ 4958. How damages estimated in United States' money; in foreign money.** If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated

upon such amount without regard to the rate of exchange. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest in the place nearest to the place where the bill was negotiated and where such bills are currently sold.

CHAPTER 90.

PROMISSORY NOTES.

§ 4959. **Defined.** A promissory note is an instrument negotiable in form whereby the signer promises to pay a specified sum of money. § 1928, Civil C.

§ 4960. **When bill of exchange deemed note.** An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note. § 1929, Civil C.

§ 4961. **Bill accepted by other than drawee becomes note.** A bill of exchange, if accepted with the consent of the owner by a person other than the drawee or an acceptor for honor, becomes in effect the promissory note of such person and all prior parties thereto are exonerated. § 1930, Civil C.

§ 4962. **Other laws applicable.** Chapter 88 and sections 4921 and 4942 of this code apply to promissory notes. § 1931, Civil C.

§ 4963. **When indorsers exonerated on sight or demand note.** If a promissory note, payable on demand or at sight without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated unless such presentment is excused. § 1932, Civil C.

CHAPTER 91.

CHECKS.

§ 4964. **Defined.** A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand without interest. § 1933, Civil C.

§ 4965. **Subject to provisions on bills. Exceptions.** A check is subject to all the provisions of this code concerning bills of exchange, except that: § 1934, Civil C.

1. The drawer and indorsers are exonerated by delay in presentment only to the extent of the injury which they suffer thereby.

2. An indorsee after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

3. No days of grace are allowed on checks.

CHAPTER 92.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

§ 1935, Civil C. **§ 4966. Bank note negotiable after payment.** A bank note remains negotiable even after it has been paid by the maker.

§ 1936, Civil C. **§ 4967. Title by transfer before and after dishonor equal.** A transferee of a bond, bank note or certificate of deposit after its apparent maturity or actual dishonor within his knowledge acquires a title equal to that of a transferee before such event.

CHAPTER 93.

GENERAL PROVISIONS.

§ 1937, Civil C. **§ 4968. Benefit of provisions of law may be waived.** Except when it is otherwise declared, the provisions of the foregoing fifty-seven chapters of this code in respect to the rights and obligations of parties to contracts are subordinate to the intention of the parties, when ascertained in the manner prescribed by the article on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

CHAPTER 94.

RELIEF IN GENERAL.

§ 1938, Civil C. **§ 4969. Compensation defined. In what cases relief given.** As a general rule compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in chapter 95 of this code.

§ 1939, Civil C. **§ 4970. Conditions of relief from forfeiture.** Whenever by the terms of an obligation a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty.

CHAPTER 95.

COMPENSATORY RELIEF.

ARTICLE 1. — DAMAGES IN GENERAL.

GENERAL PRINCIPLES.

§ 4971. **Damages for any injury.** Every person who suffers § 1940. Civil C.
detriment from the unlawful act or omission of another may recover
from the person in fault a compensation therefor in money, which is
called damages.

§ 4972. **Detriment defined.** Detriment is a loss or harm suf- § 1941. Civil C.
fered in person or property.

§ 4973. **Damages resulting after action commenced.** Dam- § 1942. Civil C.
ages may be awarded in a judicial proceeding for detriment resulting
after the commencement thereof or certain to result in the future.

INTEREST ON DAMAGES.

§ 4974. **Interest on damages.** Every person who is entitled § 1943. Civil C.
to recover damages certain, or capable of being made certain by calcu-
lation, and the right to recover which is vested in him upon a par-
ticular day is entitled also to recover interest thereon from that day,
except during such time as the debtor is prevented by law or by the
act of the creditor from paying the debt.

§ 4975. **When interest in discretion of jury.** In an action § 1944. Civil C.
for the breach of an obligation not arising from contract and in every
case of oppression, fraud or malice interest may be given in the dis-
cretion of the jury.

§ 4976. **When accepting principal waives interest.** Ac- § 1945. Civil C.
cepting payment of the whole principal as such waives all claim to am'd.
interest, unless interest is expressly provided for in the contract.

EXEMPLARY DAMAGES.

§ 4977. **When jury may give exemplary damages.** In § 1946. Civil C.
any action for the breach of an obligation not arising from contract,
when the defendant has been guilty of oppression, fraud or malice,
actual or presumed, the jury in addition to the actual damages may
give damages for the sake of example and by way of punishing the
defendant.

ARTICLE 2. — MEASURE OF DAMAGES.

DAMAGES FOR BREACH OF CONTRACT.

§ 4978. **Compensation for detriment proximately caused or naturally resulting. Damages must be certain.** For the §§ 1947, 1948,
breach of an obligation arising from contract the measure of dam- Civil C.
ages, except when otherwise expressly provided by this code, is the
amount which will compensate the party aggrieved for all the detri-
ment proximately caused thereby, or which in the ordinary course of
things would be likely to result therefrom. No damages can be

recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

§ 1949, Civil C. **§ 4979. To pay money, amount due with interest.** The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

§ 1950, Civil C. **§ 4980. Dishonor of foreign bills.** For the dishonor of foreign bills of exchange the damages are prescribed by sections 4957 and 4958 of this code.

§ 1951, Civil C. **§ 4981. For breach of covenants in grants.** The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty or of quiet enjoyment in a grant of an estate in real property is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

3. Any expense properly incurred by the covenantee in defending his possession.

§ 1952, Civil C. **§ 4982. Against incumbrances.** The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole; or, in the latter case, interest on a like amount.

§ 1953, Civil C.
am'd. **§ 4983. Of agreement to convey realty.** The detriment caused by the breach of an agreement to convey an estate in real property is the difference between the price agreed to be paid and the value of the estate agreed to be conveyed at the time of the breach and the expenses properly incurred in examining the title with interest thereon, and in preparing to enter upon the land and the amount paid on the purchase price, if any, with interest thereon from the time of the breach.

§ 1954, Civil C.
am'd. **§ 4984. To buy realty.** The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract over the value of the property.

§ 1955, Civil C. **§ 4985. Of agreement to deliver personalty not fully paid for.** The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer over the amount which would have been due to the seller under the contract, if it had been fulfilled.

§ 1956, Civil C. **§ 4986. Same when fully paid for.** The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of a wrongful conversion.

§ 1957, Civil C. **§ 4987. Of buyer to pay for personalty when title in him.** The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

§ 4988. Same when title not in buyer. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him is deemed to be: § 1985, Civil C.

1. If the property has been resold pursuant to section 4833 the excess, if any, of the amount due from the buyer under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 4833 the excess, if any, of the amount due from the buyer under the contract over the value to the seller together with the excess, if any, of the expenses properly incurred in carrying the property to market over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

§ 4989. Breach of warranty of title to personalty. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner. § 1959, Civil C.

§ 4990. Same of quality of personalty. The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred if it had been complied with, over its actual value at that time. § 1960, Civil C.

§ 4991. Same of fitness of personalty. The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose. § 1961, Civil C.

§ 4992. Breach of carrier's obligation to accept freight, etc. The detriment caused by the breach of a carrier's obligation to accept freight, messages or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount it would be necessary to pay for the same service when it ought to be performed. § 1962, Civil C.

§ 4993. Same to deliver freight, etc. The detriment caused by the breach of a carrier's obligation to deliver freight, when he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery. § 1963, Civil C.

§ 4994. For detriment caused by carrier's delay. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in the intrinsic value at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery. § 1964, Civil C.

§ 4995. Breach of warranty of agent's authority. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against his principal. § 1965, Civil C.

§ 1966, Civil C. **§ 4996. Of promise to marry.** The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

DAMAGES FOR WRONGS.

§ 1967, Civil C. **§ 4997. Compensation for detriment proximately caused, anticipated or not.** For the breach of an obligation not arising from contract the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

§ 1968, Civil C. **§ 4998. For wrongful occupation of realty.** The detriment caused by the wrongful occupation of real property in cases not embraced in sections 4999, 5005, 5006 and 5007 is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the right to damages and the costs, if any, of recovering the possession.

§ 1969, Civil C. **§ 4999. For willful detention of realty.** For willfully holding over real property by a person who entered upon the same as guardian or trustee for an infant, or by right of an estate terminable with any life or lives after the termination of the trust or particular estate without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

§ 1970, Civil C.
§ 1, c. 42, 1885. **§ 5000. For conversion of personalty.** The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of the conversion with the interest from that time; or,
2. When the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and,
3. A fair compensation for the time and money properly expended in pursuit of the property.

§ 1971, Civil C. **§ 5001. Presumption cannot be repelled.** The presumption declared by the last section cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner without his consent.

§ 1972, Civil C. **§ 5002. For conversion by superior lien holder.** One having a mere lien on personal property cannot recover greater damages for its conversion from one having a right thereto superior to his after his lien is discharged than the amount secured by the lien and the compensation allowed by section 5000 for loss of time and expenses.

§ 1973, Civil C. **§ 5003. For seduction.** The damages for seduction rest in the sound discretion of the jury.

§ 1974, Civil C. **§ 5004. Exemplary for injuries for animals.** For wrongful injuries to animals, being subjects of property, committed willfully or by gross negligence in disregard of humanity, exemplary damages may be given.

PENAL DAMAGES.

§ 5005. **For tenant's failure to surrender premises.** For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay. § 1975, Civil C.

§ 5006. **For tenant's willful holding over.** For willfully holding over real property by a tenant after the end of his term and after notice to quit has been duly given and demand of possession made the measure of damages is double the yearly value of the property for the time of withholding in addition to compensation for the detriment occasioned thereby. § 1976, Civil C.

§ 5007. **For forcible exclusion from realty.** For forcibly ejecting or excluding a person from the possession of real property the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of. § 1977, Civil C.

§ 5008. **For wrongful injuries to timber.** For wrongful injuries to timber, trees or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except when the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway; in which case the damages are a sum equal to the actual detriment. § 1978, Civil C.

GENERAL PROVISIONS.

§ 5009. **What value of property to seller deemed to be.** In estimating damages the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer and at such time after the breach of the contract as would have sufficed with reasonable diligence for the seller to effect a resale. § 1979, Civil C.

§ 5010. **What to buyer or owner.** In estimating damages, except as provided by sections 5011 and 5012, the value of property to a buyer or owner thereof deprived of its possession is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession and at such time after the breach of duty upon which his right to damages is founded as would suffice with reasonable diligence for him to make such a purchase. § 1980, Civil C.

§ 5011. **When peculiar value to person deemed value.** When certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto that may be deemed, to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer. § 1981, Civil C.

§ 5012. **Value of title papers.** For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner. § 1982, Civil C.

§ 5013. **When exclusive of exemplary damages.** The damages prescribed by this chapter are exclusive of exemplary damages and interest except when those are expressly mentioned. § 1983, Civil C.

- § 1984, Civil C. **§ 5014. Cannot recover more than would be gained by performance.** Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides except in the cases specified in the subdivisions on exemplary damages and penal damages and in sections 4996, 5003 and 5004.
- § 1985, Civil C. **§ 5015. Damages must be reasonable.** Damages must in all cases be reasonable and when an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages contrary to substantial justice, no more than reasonable damages can be recovered.
- § 1986, Civil C. **§ 5016. Nominal damages.** When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

ARTICLE 3. — SPECIFIC AND PREVENTIVE RELIEF.

GENERAL PRINCIPLES.

- § 1987, Civil C. **§ 5017. When specific relief given.** Specific or preventive relief may be given in the cases specified in this and the following two articles and no others.
- § 1988, Civil C. **§ 5018. How given.** Specific relief is given:
1. By taking possession of a thing and delivering it to a claimant.
 2. By compelling a party himself to do that which ought to be done; or,
 3. By declaring and determining the rights of parties, otherwise than by an award of damages.
- § 1989, Civil C. **§ 5019. How preventive relief given.** Preventive relief is given by prohibiting a party from doing that which ought not to be done.
- § 1990, Civil C. **§ 5020. Neither given to enforce penal law.** Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

ARTICLE 4. — SPECIFIC RELIEF.

POSSESSION OF REAL PROPERTY.

- § 1991, Civil C. **§ 5021. Method of recovery.** A person entitled to specific real property by reason, either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the code of civil procedure, either by a judgment for its possession to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

POSSESSION OF PERSONAL PROPERTY.

- § 1992, Civil C. **§ 5022. Method of recovery.** A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the code of civil procedure.

§ 5023. **Specific delivery compellable.** Any person having the possession or control of a particular article of personal property of which he is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession. § 1993, Civil C.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 5024. **When compelled.** Except as otherwise provided in this article the specific performance of an obligation may be compelled. § 1994, Civil C.

§ 5025. **Remedy mutual. When neither can be compelled.** Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance. § 1995, Civil C.

§ 5026. **Presumption as to relief for not transferring.** It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation and that the breach of an agreement to transfer personal property can be thus relieved. § 1996, Civil C.

§ 5027. **Specific performance compelled though contract signed only by one.** A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed or offers to perform it on his part and the case is otherwise proper for enforcing specific performance. § 1997, Civil C.

§ 5028. **Compelled though penalty imposed or damages liquidated.** A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed or the damages are liquidated for its breach and the party in default is willing to pay the same. § 1998, Civil C.

§ 5029. **What obligations cannot be enforced.** The following obligations cannot be specifically enforced: § 1999, Civil C.

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so.
5. An agreement to procure the act or consent of the wife of the contracting party or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

§ 5030. **When it cannot be enforced against one.** Specific performance cannot be enforced against a party to a contract in any of the following cases: § 2000, Civil C.

1. If he has not received an adequate consideration for the contract.
2. If it is not as to him just and reasonable.
3. If his assent was obtained by misrepresentation, concealment, circumvention or unfair practice of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that when the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for and the contract specifically enforced in other respects, if proper to be so enforced.

§ 2001, Civil C. **§ 5031. Same in favor of one.** Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except when his failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

§ 2002, Civil C. **§ 5032. Cannot be when title imperfect.** An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

§ 2003, Civil C. **§ 5033. When enforced against subsequent holder.** Whenever an obligation in respect to real property would be specifically enforced against a particular person it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value and except also that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

REVISION OF CONTRACTS.

§ 2004, Civil C. **§ 5034. For fraud or mistake.** When through fraud, or mutual mistake of the parties, or a mistake of one party which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved so as to express that intention so far as it can be done without prejudice to rights acquired by third persons in good faith and for value.

§ 2005, Civil C. **§ 5035. Intention to make equitable agreement presumed.** For the purpose of revising a contract it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

§ 2006, Civil C. **§ 5036. Court may inquire what instrument was intended to mean.** In revising a written instrument the court may inquire what the instrument was intended to mean and what were intended to be its legal consequences and is not confined to the inquiry what the language of the instrument was intended to be.

§ 2007, Civil C. **§ 5037. First revised, then enforced.** A contract may be first revised and then specifically enforced.

RESCISSION OF CONTRACTS.

§ 2008, Civil C. **§ 5038. When adjudged.** The rescission of a written contract may be adjudged on the application of a party aggrieved:

1. In any of the cases mentioned in section 3932; or,
2. When the contract is unlawful for causes not apparent upon its face and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

§ 5039. **Not for mere mistake.** Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same condition as if the contract had not been made. § 2009, Civil C.

§ 5040. **Compensation may be required.** On adjudging the rescission of a contract the court may require the party to whom such relief is granted to make any compensation to the other which justice may require. § 2010, Civil C.

CANCELLATION OF INSTRUMENTS.

§ 5041. **When adjudged.** When a written instrument, or the record thereof, may cause injury to a person against whom such instrument is void or voidable, such instrument may, in an action brought by the party injured, be adjudged void and the same be ordered to be delivered up for cancellation and the record thereof canceled, whether extrinsic evidence is necessary to show its invalidity or not. § 2011, Civil C. am'd.

§ 5042. **Partial cancellation.** When an instrument is evidence of different rights or obligations it may be canceled in part and allowed to stand for the residue. § 2013, Civil C.

ARTICLE 5. — PREVENTIVE RELIEF.

§ 5043. **How granted.** Preventive relief is granted by injunction, provisional or final. § 2014, Civil C.

§ 5044. **Provisional injunctions.** Provisional injunctions are regulated by the code of civil procedure. § 2015, Civil C.

§ 5045. **When final injunction granted.** Except when otherwise provided by this chapter, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant: § 2016, Civil C.

1. When pecuniary compensation would not afford adequate relief.

2. When it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

3. When the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. When the obligation arises from a trust.

§ 5046. **When injunction not granted.** An injunction cannot be granted: § 2017, Civil C.

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of the United States.

3. To stay proceedings in a state upon a judgment of a court of that state.

4. To prevent the execution of a public statute by officers of the law for the public benefit.

5. To prevent the breach of a contract, the performance of which would not be specifically enforced.

6. To prevent the exercise of a public or private office in a lawful manner by the person in possession.

7. To prevent a legislative act by a municipal corporation.

CHAPTER 96.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

ARTICLE 1.—GENERAL PRINCIPLES.

- § 2018, Civil C. **§ 5047. Debtor defined.** A debtor within the meaning of this chapter is one who by reason of an existing obligation is or may become liable to pay money to another, whether such liability is certain or contingent.
- § 2019, Civil C. **§ 5048. Creditor defined.** A creditor within the meaning of this chapter is one in whose favor an obligation exists by reason of which he is or may become entitled to the payment of money.
- § 2020, Civil C. **§ 5049. Fraud only vitiates debtor's contract.** In the absence of fraud every contract of a debtor is valid against all his creditors existing or subsequent, who have not acquired a lien on the property affected by such contract.
- § 2021, Civil C. **§ 5050. Creditors may be preferred.** A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.
- § 2022, Civil C. **§ 5051. Order of resort among creditors.** When a creditor is entitled to resort to each of several funds for the satisfaction of his claim and another person has an interest in or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

ARTICLE 2.—FRAUDULENT INSTRUMENTS AND TRANSFERS.

- § 2023, Civil C. **§ 5052. Transfers with intent to defraud creditors void.** Every transfer of property or charge thereon made, every obligation incurred and every judicial proceeding taken with intent to delay or defraud any creditor or other person of his demands is void against all creditors of the debtor and their successors in interest and against any persons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.
- § 2024, Civil C.
§ 1, c. 78, 1893.
am'd. **§ 5053. Transfer of personalty without change of possession presumed fraudulent.** Every sale made by a vendor of personal property in his possession or under his control and every assignment of personal property, unless the same is accompanied by an immediate delivery and followed by an actual and continued change of possession of the property sold or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or assignor, or subsequent purchasers or incumbrancers in good faith and for value, unless those claiming under such sale or assignment make it appear that the same was made in good faith and without any intent to hinder, delay or defraud such creditors, purchasers or incumbrancers.
- § 2025, Civil C. **§ 5054. When only act of debtor void for fraud.** A creditor can avoid the act or obligation of his debtor for fraud only when the fraud obstructs the enforcement by legal process of his right to take the property affected by the transfer or obligation.

§ 5055. **When fraudulent intent question of fact.** In all cases arising under section 3599 or under the provisions of this chapter the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration. § 2026, CIVIL C.

CHAPTER 97.

NUISANCE.

ARTICLE 1. — GENERAL PRINCIPLES.

§ 5056. **Nuisance defined.** A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission either: § 2047, CIVIL C.

1. Annoys, injures or endangers the comfort, repose, health or safety of others; or,

2. Offends decency; or,

3. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,

4. In any way renders other persons insecure in life or in the use of property.

§ 5057. **Public nuisance.** A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal. § 2048, CIVIL C.

§ 5058. **Private nuisance.** Every nuisance not included in the definition of the last section is private. § 2049, CIVIL C.

§ 5059. **Nothing done under authority of statute deemed nuisance.** Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. § 2050, CIVIL C.

§ 5060. **Liability of successive owners not abating.** Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property created by a former owner is liable therefor in the same manner as the one who first created it. § 2051, CIVIL C.

§ 5061. **Right to damages not prejudiced by abatement.** The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. § 2052, CIVIL C.

ARTICLE 2. — PUBLIC NUISANCE.

§ 5062. **Not legalized by lapse of time.** No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right. § 2053, CIVIL C.

§ 5063. **Remedies against.** The remedies against a public nuisance are: § 2054, CIVIL C.

1. Indictment.
2. A civil action; or,
3. Abatement.

§ 2055, Civil C. § **5064. Indictment.** The remedy by indictment is regulated by the penal code and the code of criminal procedure.

§ 2056, Civil C. § **5065. Civil action.** A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

§ 2057, Civil C. § **5066. Abated by public officer.** A public nuisance may be abated by any public body or officer authorized thereto by law.

§ 2058, Civil C. § **5067. By private person.** Any person may abate a public nuisance which is specially injurious to him by removing or, if necessary, destroying the thing which constitutes the same without committing a breach of the peace or doing unnecessary injury.

ARTICLE 3. --- PRIVATE NUISANCES.

§ 2059, Civil C. § **5068. Remedies against.** The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

§ 2060, Civil C. § **5069. How person may abate.** A person injured by a private nuisance may abate it by removing or, if necessary, destroying the thing which constitutes the nuisance without committing a breach of the peace or doing unnecessary injury.

§ 2061, Civil C. § **5070. When notice required.** When a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

CHAPTER 98.

MAXIMS OF JURISPRUDENCE.

§ 2062, Civil C. § **5071. How to be used and applied.** The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

§ 2063, Civil C. § **5072.** When the reason of a rule ceases, so should the rule itself.

§ 2064, Civil C. § **5073.** When the reason is the same the rule should be the same.

§ 2065, Civil C. § **5074.** One must not change his purpose to the injury of another.

§ 2066, Civil C. § **5075.** Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

§ 2067, Civil C. § **5076.** One must so use his own rights as not to infringe upon the rights of another.

§ 2068, Civil C. § **5077.** He who consents to an act is not wronged by it.

§ 2069, Civil C. § **5078.** Acquiescence in error takes away the right of objecting to it.

- § 5079. No one can take advantage of his own wrong. § 2070, CIVIL C.
- § 5080. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession. § 2071, CIVIL C.
- § 5081. He who can and does not forbid that which is done on his behalf is deemed to have bidden it. § 2072, CIVIL C.
- § 5082. No one should suffer by the act of another. § 2073, CIVIL C.
- § 5083. He who takes the benefit must bear the burden. § 2074, CIVIL C.
- § 5084. One who grants a thing is presumed to grant also whatever is essential to its use. § 2075, CIVIL C.
- § 5085. For every wrong there is a remedy. § 2076, CIVIL C.
- § 5086. Between those who are equally in the right or equally in the wrong the law does not interpose. § 2077, CIVIL C.
- § 5087. Between rights otherwise equal the earliest is preferred. § 2078, CIVIL C.
- § 5088. No man is responsible for that which no man can control. § 2079, CIVIL C.
- § 5089. The law helps the vigilant before those who sleep on their rights. § 2080, CIVIL C.
- § 5090. The law respects form less than substance. § 2081, CIVIL C.
- § 5091. That which ought to have been done is to be regarded as done in favor of him to whom and against him from whom performance is due. § 2082, CIVIL C.
- § 5092. That which does not appear to exist is to be regarded as if it did not exist. § 2083, CIVIL C.
- § 5093. The law never requires impossibilities. § 2084, CIVIL C.
- § 5094. The law neither does nor requires idle acts. § 2085, CIVIL C.
- § 5095. The law disregards trifles. § 2086, CIVIL C.
- § 5096. Particular expressions qualify those which are general. § 2087, CIVIL C.
- § 5097. Contemporaneous exposition is in general the best. § 2088, CIVIL C.
- § 5098. The greater contains the less. § 2089, CIVIL C.
- § 5099. Superfluity does not vitiate. § 2090, CIVIL C.
- § 5100. That is certain which can be made certain. § 2091, CIVIL C.
- § 5101. Time does not confirm a void act. § 2092, CIVIL C.
- § 5102. The incident follows the principal, not the principal the incident. § 2093, CIVIL C.
- § 5103. An interpretation which gives effect is preferred to one which makes void. § 2094, CIVIL C.
- § 5104. Interpretation must be reasonable. § 2095, CIVIL C.
- § 5105. When one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer. § 2096, CIVIL C.

CHAPTER 99.

DEFINITIONS AND GENERAL PROVISIONS.

- § 2097, Civil C. **§ 5106. Words to be understood in their ordinary sense.** Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears and except also that the words hereinafter explained are to be understood as thus explained.
- § 2098, Civil C. **§ 5107. Word defined by statute has always same meaning.** Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase whenever it occurs, except when a contrary intention plainly appears.
- § 2099, Civil C. **§ 5108. Degrees of care.** There are three degrees of care and of diligence mentioned in this code, namely, slight, ordinary and great. The latter include the former.
- § 2100, Civil C. **§ 5109. Degrees defined.** Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance.
- § 2101, Civil C. **§ 5110. Degrees of negligence.** There are three degrees of negligence mentioned in this code, namely, slight, ordinary and gross. The latter include the former.
- § 2102, Civil C. **§ 5111. Degrees defined.** Slight negligence consists in the want of great care and diligence; ordinary negligence, in the want of ordinary care and diligence; and gross negligence, in the want of slight care and diligence.
- § 2103, Civil C. **§ 5112. What children includes.** The term children includes children by birth and by adoption.
- § 2104, Civil C. **§ 5113. Debtor and creditor.** Except as defined and used in chapter 96 of this code every one who owes to another the performance of an obligation is called a debtor and the one to whom he owes it is called a creditor.
- § 2105, Civil C. **§ 5114. Good faith.** Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another even through the forms or technicalities of law together with an absence of all information or belief of facts which would render the transaction unconscientious.
- § 2106, Civil C. **§ 5115. Notice classified.** Notice is either actual or constructive.
- § 2107, Civil C. **§ 5116. Actual notice.** Actual notice consists in express information of a fact.
- § 2108, Civil C. **§ 5117. Constructive notice.** Constructive notice is notice imputed by the law to a person not having actual notice.
- § 2109, Civil C. **§ 5118. What deemed constructive notice.** Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact and who omits to make such inquiry with reasonable diligence is deemed to have constructive notice of the fact itself.
- § 2110, Civil C. **§ 5119. False notice cannot become valid.** A notice which is false when given is not valid by the subsequent happening of the event.

§ 5120. "**Paper.**" The word "paper" means any flexible material upon which it is usual to write. § 2111, CIVIL C.

§ 5121. "**Person.**" The word "person" except when used by way of contrast, includes not only human beings, but bodies politic or corporate. § 2112, CIVIL C.

§ 5122. "**Several.**" The word "several" in relation to number means two or more. § 2113, CIVIL C.

§ 5123. "**Third persons.**" The words "third persons" include all who are not parties to the obligation or transaction concerning which the phrase is used. § 2114, CIVIL C.

§ 5124. **Holidays.** Holidays are every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, the thirtieth day of May, every day on which an election is held throughout the state and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. § 2115, CIVIL C.
I. C. SS. 1885.

§ 5125. **When following day holiday.** If the first day of January, twenty-second day of February, fourth day of July, thirtieth day of May or twenty-fifth day of December falls upon a Sunday the Monday following is a holiday. § 2116, CIVIL C.
am'd.

§ 5126. **Business days.** All other days than those mentioned in the last two sections are to be deemed business days for all purposes. § 2117, CIVIL C.

§ 5127. **Act due on holiday performed on next day.** Whenever an act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. § 2118, CIVIL C.

§ 5128. **Usage.** Usage is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general and uniform that they must be presumed to have acted with reference thereto. § 2119, CIVIL C.

§ 5129. "**Usual.**" "**Customary.**" The words "usual" and "customary" mean "according to usage." § 2120, CIVIL C.

§ 5130. **Valuable consideration.** A valuable consideration is a thing of value parted with, or a new obligation assumed at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value." § 2121, CIVIL C.

§ 5131. "**Verdict.**" The word "verdict" includes not only the verdict of a jury, but also the finding upon the facts of a judge or of a referee appointed to determine the issues in a cause. § 2122, CIVIL C.

§ 5132. "**Year.**" "**Month.**" The word "year" means a calendar year and "month" a calendar month. Fractions of a year are to be computed by the number of months, thus: half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day and involve no questions of priority. § 2123, CIVIL C.

§ 5133. **Masculine includes what.** Words used in the masculine gender include the feminine and neuter. § 2124, CIVIL C.

§ 5134. **Singular includes what.** Words used in the singular number include the plural and the plural the singular, except when a contrary intention plainly appears. § 2125, CIVIL C.

- § 2126, Civil C. **§ 5135. Other definitions.** Words used in the present tense include the future as well as the present; the word "oath" includes "affirmation;" and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" "signature" or "subscription" includes mark, when the person cannot write, his name being written near it and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context:
1. The word "property" includes property, real and personal.
 2. The words "real property" are coextensive with lands, tenements and hereditaments.
 3. The words "personal property" include money, goods, chattels, things in action and evidences of debt.
 4. The word "will" includes codicils.
- § 2127, Civil C. **§ 5136. "Compound interest."** The words "compound interest" mean interest added to the principal as the former becomes due and thereafter made to bear interest.
- § 2128, Civil C. **§ 5137. "Written" and "printed."** The words "writing" and "written" include "printing" and "printed" except in the case of signatures and when the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink it must be so made.
- § 2129, Civil C. **§ 5138. Code excludes common law.** The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to this code. This code establishes the law of this state respecting the subjects to which it relates; and its provisions are to be liberally construed with a view to effect its objects and to promote justice. Whenever this code is cited, enumerated, referred to or amended it may be designated simply as "the civil code," adding, when necessary, the number of the section.
- § 2130, Civil C. **§ 5139. Seal.** When the seal of a court, public officer, or person is required by law to be affixed to any process, commission, paper or instrument, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.
- § 2131, Civil C. **§ 5140. Majority power.** 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 is otherwise expressed in the act giving the authority.
- § 2132, Civil C. **§ 5141. Repeal does not revive.** Whenever any act of the legislative assembly is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided.
- § 2133, Civil C. **§ 5142. Effect of repeal.** The repeal of any statute by the legislative assembly shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.
- § 1, c. 38, 1889, am'd. **§ 5143. Successive weeks construed:** Whenever in any act or statute of the state of North Dakota, providing for the publication of notices, the phrase "successive weeks" is used, the word weeks shall be construed to mean calendar weeks and the publication upon

any day in such week shall be sufficient publication for that week: provided, that at least five days shall intervene between such publications and all publications heretofore or hereafter made in accordance with the provisions of this section shall be deemed legal and valid.

§ 5144. **Fiscal year.** The fiscal year for the state of North Dakota shall commence on the first day of July and end on the thirtieth day of June each year and all reports required annually or biennially of any state officer or from any private corporation shall be made to and include the thirtieth day of June preceding and all accounts of such officers shall be closed and balanced to that date. § 1, c. 67, 1893. am'd.

CODE OF CIVIL PROCEDURE.

CHAPTER 1.

GENERAL DEFINITIONS AND PROVISIONS.

§ 5145. **Title.** This act shall be known as the code of civil procedure of the state of North Dakota. § 1, C. Civ. P. am'd.

§ 5146. **Not retroactive.** No part of it is retroactive unless expressly so declared. § 2, C. Civ. P.

§ 5147. **Code is law of this state. Excludes common law.** The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to effect its objects and to promote justice. § 3, C. Civ. P.

§ 5148. **Prior rights not affected.** No action or proceeding commenced before this code takes effect and no right accrued is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable. § 4, C. Civ. P.

§ 5149. **Limitation commenced to run not interrupted.** When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code. § 5, C. Civ. P.

§ 5150. **Computation of time.** The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it is also excluded. § 6, C. Civ. P.

§ 5151. **Language, how construed.** Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or are defined by statute, are to be construed according to such peculiar and appropriate meaning or definition. § 7, C. Civ. P.

§ 5152. **Definition of words.** The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context: § 8, C. Civ. P.

1. The word "writ" signifies an order or precept in writing, issued in the name of the state or of a court or judicial officer; and the word "process," a writ or summons issued in the course of judicial proceedings.

2. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories.

§ 9, C. Civ. P. § 5153. **Effect upon former laws. Repeals.** No statute, law or rule is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued or any action or proceeding already taken, except as in this code provided, nor does it affect any private statute not expressly repealed.

§ 10, C. Civ. P. § 5154. **Act how cited.** This act, whenever cited, enumerated, referred to or amended, may be designated simply as the code of civil procedure, adding, when necessary, the number of the section.

§ 11, C. Civ. P. § 5155. **Remedies classified.** Remedies in the courts of justice are divided into:

1. Actions.
2. Special proceedings.

§ 12, C. Civ. P. § 5156. **Action defined.** An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong or the punishment of a public offense.

§ 13, C. Civ. P. § 5157. **Special proceedings.** Every other remedy is a special proceeding.

§ 14, C. Civ. P. § 5158. **Actions classified.** Actions are of two kinds:

1. Civil.
2. Criminal.

§ 15, C. Civ. P. § 5159. **Criminal action defined.** A criminal action is one prosecuted by the state as a party against a person charged with a public offense for the punishment thereof.

§ 16, C. Civ. P. § 5160. **Civil action. Process.** Every other is a civil action; and all process in civil actions shall run in the name of the state of North Dakota.

§ 17, C. Civ. P. § 5161. **Civil and criminal remedies not merged.** When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

CHAPTER 2.

COURTS.

ARTICLE 1.—OF THE COURTS IN GENERAL.

§ 5162. **Courts.** The following are the courts of justice of this state: § 18, C. Civ. P., am'd.

1. The supreme court.
2. The district courts.
3. The county courts.
4. The courts of justices of the peace.
5. Such other courts as are or may be created by law for cities, incorporated towns and villages.

Of these the supreme, district and county courts are courts of record.

§ 5163. **Sittings of courts public. Persons may be excluded when.** The sittings of every court of this state shall be public and every citizen may freely attend the same, except that on the trial of cases of a scandalous or obscene nature the presiding judge or justice may, in his discretion, exclude therefrom all persons not necessarily present as parties or witnesses. § 1, c. 104, 1890. am'd.

§ 5164. **Courts not open on Sundays and holidays. Jurisdiction of magistrates on such days.** Courts shall not be open on Sundays or legal holidays, unless for the purpose of instructing or discharging a jury, or receiving a verdict. Any magistrate may, however, on such days exercise his jurisdiction in criminal cases to preserve the peace or arrest offenders, and may in all cases either civil or criminal admit any person arrested to bail.

ARTICLE 2.—THE SUPREME COURT.

§ 5165. **Jurisdiction defined. Power to issue writs.** The supreme court shall have and exercise appellate jurisdiction only, except when otherwise specially provided by law or the constitution. The supreme court has power in the exercise of its original jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari and injunction; and in the exercise of its appellate jurisdiction and in its superintending control over inferior courts it may issue such original and remedial writs as are necessary to the proper exercise of such jurisdiction; provided, that said court shall exercise the said original jurisdiction only in habeas corpus cases and in such cases of strictly public concern as involve questions affecting the sovereign rights of the state or its franchises or privilege. § 1, c. 118, 1891.

§ 5166. **Issue and return of writs.** The supreme court shall be always open for the issue and return of all writs and process which it may lawfully issue and for the hearing and determination of the same, subject to such regulations and conditions as the court may prescribe. And any judge of said court may order the issuance of any such writ or process, and prescribe the time and manner of service and the time and place of return of the same; provided, that in cases of habeas corpus the judge of the supreme court who issues or causes the writ to issue may, at his discretion, direct that § 2, c. 118, 1891.

the writ shall be made returnable and heard and determined, either before the supreme court or any judge thereof, or before any district court of the state or any judge of any district court of the state; provided, further, that any district court or judge thereof before whom any writ is made returnable as prescribed in this section is hereby vested with full power and authority necessary for carrying into complete execution all of its judgments, decrees and determinations, subject to appeal as provided by law.

§ 5167. Issues of fact to be sent to district court for trial. Whenever an issue of fact shall be joined or assessment of damages by a jury be necessary in any action or proceeding commenced in the supreme court, the court may, in its discretion, send the same to some district court, and it shall be there determined in the same manner as other issues of fact are tried or assessments made and return be made thereof as directed by the supreme court. In such cases the supreme court may order a special verdict to be found and returned.

§ 3, c. 118, 1891.

§ 5168. Power to execute judgments, decrees, etc. Said court is vested with full power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters aforesaid and for the exercise of its jurisdiction as the supreme judicial tribunal of the state; and shall by order made at general or special term from time to time make and prescribe such general rules and regulations for the conduct and hearing of causes in said court, not inconsistent with the statute law of the state, as it may deem proper; and the said court shall by order prescribe the manner of publication at the expense of the state of such rules and regulations; and the same shall not be in force until thirty days after the publication thereof.

§ 4, c. 118, 1891.

§ 5169. Decisions. Syllabus. The said court shall in all cases decided by it give its decision in writing, which shall be filed with the clerk of said court with the other papers in the case. Decisions in cases heard at a general or special term and all orders affecting the same may be filed in vacation, and judgment entered thereon in pursuance of the finding and order of the court with the same effect as upon decisions made and filed in term. Said court at the time of announcing its decisions in any action determined by said court shall file with the clerk thereof a syllabus of the decision in such action, so prepared as to embody as briefly as practicable the principles settled in and by such decision.

§ 5, c. 118, 1891.

§ 5170. Adjournments. If any two judges of said court shall not attend on the first or on any other day of the term, the clerk shall enter such fact on record, and the judge present shall adjourn the court to the next day and so on from day to day for six days, if neither of the absent judges appears; at the end of which period said court shall be adjourned, and all matters pending therein shall stand continued until the next regular or special term. If none of the judges appear, the clerk of said court may adjourn from day to day as provided in this section.

§ 6, c. 118, 1891.

§ 5171. When causes on calendar stand over. Whenever there is no general term of said court at the time fixed therefor by law for any cause, or whenever there is a continuance of the term of said court or a change in the time of holding any term by act of the legislative assembly, all causes then upon the calendar of said court,

all writs, recognizances, appeals and proceedings commenced, taken or made returnable to said court at said term shall stand over to and be heard at the next general term with like effect as if no such failure, continuance or change had occurred.

§ 5172. **Preference on calendar.** On a second and each subsequent appeal to the supreme court or when an appeal has once been dismissed for defect or irregularity, the cause shall be placed upon the calendar as of the time of filing the first appeal; and whenever in any action or proceeding in which the state of North Dakota, or any state officer or any board of state officers is or are sole plaintiff or defendant, an appeal has been or shall be brought from any judgment or order for or against him or them in any court, such appeal shall have a preference in the supreme court and may be moved by either party out of the order on the calendar. § 24, C. Civ. P.

§ 5173. **Majority of judges must concur.** The concurrence of a majority of the judges is necessary to pronounce judgment. If a majority does not concur, the case must be reheard. But no more than two rehearings shall be had; and if on the second rehearing a majority of the judges does not concur, the judgment shall be affirmed. § 25, C. Civ. P. am'd.

§ 5174. **Adjournment to other buildings.** The supreme court may be held in other buildings than those designated by law as places for holding courts and at a different place in the same city from that at which it is appointed to be held. § 26, C. Civ. P. § 1, c. 53, 1879. am'd.

ARTICLE 3. — THE DISTRICT COURTS.

§ 5175. **Jurisdiction of district courts defined.** The district courts have the general jurisdiction conferred upon them by the constitution and in the exercise thereof they have power to issue all writs, process and commissions provided therein or by law or which may be necessary to the due execution of the powers with which they are vested. They have power to hear and determine all civil actions and proceedings and all cases of crimes and misdemeanors of every kind; and they have all the powers according to the usages of courts of law and equity necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice and to carrying into effect their judgments, orders and other determinations, subject to a re-examination by the supreme court as provided by law. They have jurisdiction of appeals from all final judgments of justices of the peace and police magistrates, and from all judgments, decrees or orders of the county court, and from the determination of inferior officers, boards or tribunals, in such cases and pursuant to such regulations as may be prescribed by law.

§ 5176. **Court always open. Procedure.** The district court is always open for the purpose of hearing and determining 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 such court has jurisdiction, original or appellate, except issues of fact in civil and criminal actions. Such issues must be tried in term time in the county or judicial district in which the action is brought or to which the place of trial is changed by order of the court upon the written consent of the parties to such action or upon the grounds provided by law; provided, that issues of fact in civil actions triable by the court without a jury, or in which a § 1, c. 86, 1893.

jury trial has been waived, may, in the discretion of the court and upon the consent of the parties in open court entered in the minutes or in writing filed with the clerk, be tried and determined and judgment given out of term time at any place within the district in which such action is pending.

§ 2, c. 86, 1893.

§ 5177. Judgments by default. Ex parte applications may be made, heard and determined and judgments by default given at any place within the state.

§ 3, c. 86, 1893.

§ 5178. Acts of judge are acts of the court. All orders made, judgments given or other acts done by any judge of the district court in any action, special proceeding or other matter, civil or criminal, shall be deemed and held to be the orders, judgments and acts of the court and the several judges of the district court shall have jurisdiction throughout the state to exercise all the powers conferred by law upon the district court or judges thereof, subject to the limitations in this article provided.

§ 4, c. 86, 1893.

§ 5179. No judge to act on matters not pending in his district. Exceptions. No judge of the district court shall hear or determine any action, special proceeding, motion or application, or make any order or give any judgment in any action or proceeding not pending in the judicial district for which he is elected except in the following cases:

1. Upon the written request of the judge of the district in which such action or proceeding is at the time pending.

2. When, upon the application of either party to such action or proceeding and upon due notice to the opposite party, if he shall have appeared and is entitled to such notice, it shall be made to appear by affidavit to the satisfaction of such judge who shall have power to hear and determine such preliminary application, that the judge of the district in which such action, proceeding, motion or application is pending or about to be commenced, is absent from his district, or incapacitated or disqualified to act therein, such application shall be made only to the judge of a district adjoining that in which such action or proceeding is pending, and upon the hearing thereof counter affidavits may be used.

§ 5, c. 86, 1893.

§ 5180. Order or judgment. How vacated. No order or judgment given by the judge of any district contrary to the limitations of the preceding sections shall for that reason be void, but such order or judgment may be vacated upon application within thirty days from the time the same shall have been made or given to the judge of the district in which the action or proceeding in which the same was made or given is pending, and if appealable by the supreme court on appeal.

CHAPTER 3.

FORM OF CIVIL ACTIONS.

§ 5181. Distinction between actions at law and suits in equity abolished. Parties named. The distinction between actions at law and suits in equity and the forms of all such actions and suits heretofore existing are abolished; and there shall be in this state hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action. In such action the party complaining shall be known as the plaintiff and the adverse party as the defendant. §§ 33, 34. C. Civ. P.

§ 5182. Actions upon judgments. No action shall be commenced upon a judgment rendered in any court of this state between the same parties within nine years after its rendition without leave of the court for good cause shown and notice to the adverse party. § 35, C. Civ. P. am'd.

§ 5183. Issues must be stated. Feigned issues are abolished, and instead thereof in the cases where the power now exists to order a feigned issue, or when a question of fact not put in issue by the pleadings is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial. § 36, C. Civ. P.

CHAPTER 4.

TIME OF COMMENCING ACTIONS.

ARTICLE 1.—IN GENERAL.

§ 5184. Limitations. Civil actions can only be commenced within the periods prescribed in this code after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited can only be taken by answer. § 37, C. Civ. P.

ARTICLE 2.—TIME OF COMMENCING ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

§ 5185. By the state. The state of North Dakota will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the state to the same, unless: § 38, C. Civ. P.

1. Such right or title shall have accrued within forty years before any action or other proceeding for the same shall be commenced; or,

2. The state or those from whom it claims shall have received the rents and profits of such real property or of some part thereof within the space of forty years.

- § 39, C. Civ. P. **§ 5186. Persons claiming under state.** No action shall be brought for or in respect to real property by any person claiming by virtue of grants from the state, unless the same might have been commenced as herein specified in case such grant had not been issued or made.
- § 40, C. Civ. P. **§ 5187. Extension of limitation when.** When grants of real property shall have been issued or made by the state and the same shall be declared void by the determination of a competent court rendered upon an allegation of a fraudulent suggestion, or concealment, or forfeiture, or mistake, or ignorance of a material fact, or wrongful detaining, or defective title, in such case an action for the recovery of the premises so conveyed may be brought either by the state or by any subsequent grantee of the same premises, his heirs or assigns, within twenty years after such determination was made, but not after that period.
- § 41, C. Civ. P. **§ 5188. Seizin within twenty years.** No action for the recovery of real property or for the recovery of the possession thereof shall be maintained, unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.
- § 42, C. Civ. P. **§ 5189. Same.** No cause of action, or defense, or counterclaim to an action founded upon the title to real property or to rents or services out of the same shall be effectual, unless it appears that the person prosecuting the action or interposing the defense or counterclaim, or under whose title the action is prosecuted or the defense or counterclaim is made, or the ancestor, predecessor or grantor of such person was seized or possessed of the premises in question within twenty years before the committing of the act in respect to which such action is prosecuted or defense or counterclaim made.
- § 43, C. Civ. P. **§ 5190. One year after entry.** No entry upon real estate shall be deemed sufficient or valid as a claim unless an action is commenced thereon within one year after the making of such entry and within twenty years from the time when the right to make such entry descended or accrued.
- § 44, C. Civ. P. **§ 5191. Possession presumed.** In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appears that such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.
- § 45, C. Civ. P. **§ 5192. Occupation under written instrument.** Whenever it shall appear that the occupant or those under whom he claims entered into the possession of premises under claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises, under such claim for twenty years, the premises so included shall be deemed to have been held adversely; except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

§ 5193. **Adverse possession.** For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases: § 46, C. Civ. P.

1. When it has been usually cultivated or improved.
2. When it has been protected by a substantial inclosure.
3. When, although not inclosed, it has been used for the supply of fuel or of fencing timber for the purposes of husbandry, or the ordinary use of the occupant.

4. When a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

§ 5194. **Actual adverse holding.** When it shall appear that there has been an actual continued occupation of premises under a claim of title exclusive of any other right, but not founded upon a written instrument, or a judgment or decree, the premises so actually occupied and no other shall be deemed to have been held adversely. § 47, C. Civ. P.

§ 5195. **Under claim not written.** For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only: § 48, C. Civ. P.

1. When it has been protected by a substantial inclosure.
2. When it has been usually cultivated or improved.

§ 5196. **Landlord and tenant.** Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or, when there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited. § 49, C. Civ. P.

§ 5197. **Effect of descent.** The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property. § 50, C. Civ. P.

§ 5198. **Disabilities extend time.** If a person entitled to maintain any of the actions mentioned in this article, or to interpose a defense or counterclaim thereto, or to make an entry upon real property, is, when his title first descends or his cause of action or right of entry first accrues, or when such defense or counterclaim might be interposed, either: § 51, C. Civ. P. am'd.

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term less than for life, the time of such disability is not a part of the time in this article limited for the commencement of such action, or the making of such entry, or the interposing of such defense or counterclaim; but the time so limited cannot be extended more than ten years after the disability ceases or after the death of the person so disabled.

ARTICLE 3.—TIME OF COMMENCING OTHER ACTIONS.

§ 52, C. Civ. P. **§ 5199. Other periods.** The following actions must be commenced within the following periods after the cause of action has accrued.

§ 53, C. Civ. P. **§ 5200. Ten years.** Within ten years:
 1. An action upon a judgment or decree of any court of the United States or of any state or territory within the United States.
 2. An action upon a contract contained in any conveyance or mortgage of or instrument affecting the title to real property except a covenant of warranty, an action upon which must be commenced within ten years after the final decision against the title of the covenantor.

§ 54, C. Civ. P.
 am'd. **§ 5201. Six years.** Within six years:
 1. An action upon a contract, obligation or liability, express or implied, excepting those mentioned in section 5200.
 2. An action upon a liability created by statute, other than a penalty or forfeiture, when not otherwise expressly provided.
 3. An action for trespass upon real property.
 4. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.
 5. An action for criminal conversation, or for any other injury to the person or rights of another not arising on contract, and not hereinafter enumerated.

6. An action for relief on the ground of fraud in cases which heretofore were solely cognizable by the court of chancery, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

§ 55, C. Civ. P. **§ 5202. Three years.** Within three years:
 1. An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

2. An action upon a statute for a penalty or forfeiture, when the action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribes a different limitation.

§ 56, C. Civ. P.
 707½ 1, c. 87, 1883.
 am'd. **§ 5203. Two years.** Within two years:
 1. An action for libel, slander, assault, battery or false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the state.

3. An action for the recovery of damages resulting from malpractice.

4. An action for injuries done to the person of another, when death ensues from such injuries; and the cause of action shall be deemed to have accrued at the time of the death of the party injured.

§ 57, C. Civ. P. **§ 5204. One year.** Within one year:
 1. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

§ 58, C. Civ. P. **§ 5205. Balance of open account.** In an action brought to recover a balance due upon a mutual, open and current account, when there have been reciprocal demands between the parties, the cause of

action shall be deemed to have accrued from the time of the last item proved in the account on either side.

§ 5206. **Forfeiture by person. State.** An action upon a statute for a penalty or forfeiture given in whole or in part to any person who will prosecute for the same must be commenced within one year after the commission of the offense; and if the action is not commenced within the year by a private party, it may be commenced within two years thereafter in behalf of the state by the attorney general, or by the state's attorney of the county where the offense was committed. § 59, C. Civ. P. am'd.

§ 5207. **Other relief ten years.** An action for relief not hereinbefore provided for must be commenced within ten years after the cause of action shall have accrued. § 60, C. Civ. P.

§ 5208. **Same to state and persons.** The limitations prescribed in this chapter shall apply to actions brought in the name of the state, or for its benefit, in the same manner as to actions by private parties. § 61, C. Civ. P.

ARTICLE 4. — GENERAL PROVISIONS AS TO THE TIME OF COMMENCING ACTIONS.

§ 5209. **When action deemed commenced.** An action is commenced as to each defendant when the summons is served on him, or on a codefendant who is a joint contractor or otherwise united in interest with him. An attempt to commence an action is deemed equivalent to the commencement thereof within the meaning of this chapter, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other officer of the county in which the defendants, or one of them usually or last resided; or, if a corporation is defendant, to the sheriff or other officer of the county in which was situated the principal place of business of such corporation, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt must be followed by the first publication of the summons, or the service thereof, within sixty days. § 62, C. Civ. P. am'd.

§ 5210. **Exception. Absentee.** If, when the cause of action shall accrue against any person, he shall be out of the state, such action may be commenced within the terms herein respectively limited after the return of such person into this state; and if after such cause of action shall have accrued such person shall depart from and reside out of this state or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. § 63, C. Civ. P. am'd.

§ 5211. **Same. Disabilities.** If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, is at the time the cause of action accrued, either: § 64, C. Civ. P.

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life, the time of such disability is not a part of the time limited for the commencement of the action; provided, that the period within which the

action must be brought cannot be extended more than five years by any such disability except infancy, nor can it be extended in any case longer than one year after the disability ceases.

§ 53. C. Civ. P. **§ 5212. Limitation in case of death.** If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced by his representatives after the expiration of that time and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his executors or administrators after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

§ 66. C. Civ. P. **§ 5213. In case of war.** When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of the action.

§ 67. C. Civ. P.
am'd. **§ 5214. When judgment reversed.** If an action is commenced within the time prescribed therefor and the judgment therein is reversed on appeal, the plaintiff or, if he dies and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

§ 68. C. Civ. P.
am'd. **§ 5215. Stay by injunction, etc.** When the commencement of an action is stayed by injunction or other order of a court or judge, or by statutory prohibition, the time of the continuance of the stay is not a part of the time limited for the commencement of the action.

§ 69. C. Civ. P. **§ 5216. When disability available.** No person can avail himself of a disability, unless it existed when his right of action accrued.

§ 70. C. Civ. P. **§ 5217. Coexisting disabilities.** When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are all removed.

§ 71. C. Civ. P. **§ 5218. Bank notes.** This chapter does not affect actions to enforce the payment of bills, notes or other evidence of debt, issued by moneyed corporations, or issued or put in circulation as money.

§ 72. C. Civ. P. **§ 5219. Moneyed corporations.** This chapter shall not affect actions against directors or stockholders of a moneyed corporation or banking association to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within six years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created.

§ 73. C. Civ. P. **§ 5220. New promise must be in writing.** No acknowledgment or promise is sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

CHAPTER 5.

PARTIES TO CIVIL ACTIONS.

§ 5221. **Action must be prosecuted by party in interest.** § 74, C. Civ. P. am'd.
Every action must be prosecuted in the name of the real party in interest except as otherwise provided in section 5223.

§ 5222. **Assignee. Equities.** In the case of an assignment § 75, C. Civ. P.
of a thing in action the action by the assignee shall be without prejudice to any set-off or other defense existing at the time or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due.

§ 5223. **Executors and trustees.** An executor or administrator, a trustee of an express trust or a person expressly authorized by statute may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section shall be construed to include a person with whom or in whose name a contract is made for the benefit of another. § 76, C. Civ. P.

§ 5224. **Married woman.** When a married woman is a party, § 77, C. Civ. P.
her appearance, the prosecution or defense of the action and the joinder with her of any other person or party must be governed by the same rules as if she was single.

§ 5225. **Infant must appear by guardian.** When an infant § 78, C. Civ. P.
is a party he must appear either by his general guardian or by a guardian appointed by the court, in which the action is prosecuted, or by a judge thereof. A guardian may be appointed in any case, when it is deemed by the court, in which the action is prosecuted, or by a judge thereof, expedient to represent the infant in the action, notwithstanding he may have a general guardian and may have appeared by him.

§ 5226. **Guardian, how appointed.** The guardian shall be § 79, C. Civ. P.
appointed:

1. When the infant is plaintiff, upon the application of the infant, if he is of the age of fourteen years; or if under that age, upon the application of his general or testamentary guardian, if he has any, or of a relative or friend of the infant. If made by a relative or friend of the infant, notice thereof must first be given to such guardian, if he has one; if he has none, then to the person with whom such infant resides.

2. When the infant is defendant, upon the application of the infant, if he is of the age of fourteen years and applies within twenty days after the service of summons. If he is under the age of fourteen or neglects so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant, after notice of such application being first given to the general or testamentary guardian of such infant, if he has one within this state; if he has none, then to the infant himself, if over fourteen years of age and within the state; or, if under that age and within the state, to the person with whom such infant resides. In actions for the partition of real property, or for the foreclosure of a mortgage or other instrument, when an infant defendant resides out of this state, the

plaintiff may apply to the court or a judge thereof, in which the action is pending, and will be entitled to an order designating some suitable person to be the guardian for the infant defendant for the purposes of the action, unless the infant defendant or some one in his behalf within a number of days after the service of a copy of the order, which number of days shall be in the said order specified, shall procure to be appointed a guardian for the said infant: and the court shall give special directions in the order for the manner of the service thereof, which may be upon the infant himself or by service upon any relation or person with whom the infant resides, and either by mail or personally upon the person so served. And in case an infant defendant having an interest in the event of the action shall reside in any state with which there shall not be a regular communication by mail, on such fact satisfactorily appearing to the court the court may appoint a guardian ad litem for such absent infant party for the purpose of protecting the right of such infant in said action, and on such guardian ad litem process, pleadings and notices in the action may be served in the like manner as upon a party residing in this state.

§ 5227. Guardian for person of unsound mind. When the defendant is a person of unsound mind at the time the action is commenced and no guardian has been appointed of his person or estate, the court or a judge thereof shall appoint a guardian for him for the action. If during the pendency of an action either party shall become or prove to be of unsound mind, the action may be prosecuted or defended by his guardian in like manner as if it had been commenced after the appointment of the guardian, or the court or judge may appoint a guardian for the action as the case may require. Such guardian for the action may be appointed upon the application of any party thereto or any relative or friend of such person of unsound mind after at least five days' notice of such application shall have first been given to such person personally, if a resident of this state, and if not a resident, in such manner as the court or judge shall direct. Upon the hearing of such application the court or judge may, if deemed desirable and practicable, order such person of unsound mind to appear or be brought in by the sheriff in person.

§ 80. C. Civ. P.
am'd.

§ 5228. Guardian's security. No guardian appointed for an infant or a person of unsound mind under the provisions of this chapter shall be permitted to receive any money or other property of the ward except costs and expenses allowed to the guardian by the court, or recovered by the ward in the action, until he has given sufficient security approved by the judge of the court to account for and apply the same under the direction of the court. And no person appointed a guardian for the purpose of defending an action brought against an infant or person of unsound mind shall be liable for the costs of such action, unless specially charged by the order of the court for some personal misdemeanor therein.

§ 81. C. Civ. P.

§ 5229. Who to be plaintiffs. All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs except as otherwise provided in this chapter.

§ 82. C. Civ. P.

§ 5230. Defendants. Any person may be made a defendant, who has or claims an interest in the controversy adverse to the plaintiff or who is a necessary party to a complete determination or settlement of the questions involved therein; and in an action to recover possession of real estate the landlord and tenant thereof may be joined

as defendants, and any person claiming title or right of possession to real estate may be made parties, plaintiff or defendant, as the case may require, to any such action.

§ 5231. Persons holding unrecorded conveyance need not be made parties. In an action to foreclose a mortgage or other lien upon real property no person holding a conveyance from or under the mortgagor of the property mortgaged, or other owner thereof, or having a lien upon such property, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered and the proceedings therein had are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action. § 1, c. 84, 1890.

§ 5232. Parties to be joined. Of the parties to the action those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason therefor being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole. § 83, C. Civ. P.

§ 5233. When severally liable. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, whether the action is brought upon the instrument, or by a party thereto to recover against other parties liable over to him, and persons liable severally for the same debt or demand, although upon different obligations or instruments, may all, or one or more of them, be included in the same action at the option of the plaintiff. § 84, C. Civ. P. am'd.

§ 5234. Action does not abate. No action shall abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survives or continues. In case of the death or other disability of a party, the court on motion at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued by or against his representatives or successor in interest. In case of any other transfer of interest the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. After a verdict is rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law. At any time after the death or other disability of the party plaintiff the court in which an action is pending upon notice to such persons as it may direct and upon application of any person aggrieved may, in its discretion, order that the action be deemed abated, unless the same is continued by the proper parties within a time to be fixed by the court, not less than six months nor exceeding one year from the granting of the order. § 85, C. Civ. P.

§ 5235. Successor may revive judgment. Where judgment has heretofore or shall hereafter be recovered for the possession of real property and the party recovering such judgment shall have died subsequent to the recovery thereof, his successor in interest in § 86, C. Civ. P.

said real property, whether by grant, devise or inheritance, may revive said judgment and enforce the same by execution on motion within one year after said death, or afterwards on supplemental complaint.

§ 87, C. Civ. P. **§ 5236. Nonresident intestate.** When an intestate, not being an inhabitant of the state, shall die out of the state, not leaving assets therein, and there is pending in the supreme court an appeal brought by such intestate from a judgment against him, the court in which such appeal is pending may order the judgment appealed from affirmed with costs, unless the attorney for the intestate on said appeal procures such action to be revived within six months after notice to perfect such appeal by the substitution of a representative in said action.

§ 88, C. Civ. P.
am'd. **§ 5237. Death of one of several parties.** In case of the death of one of two or more plaintiffs or one of two or more defendants, if part only of the cause of action, or part of some of two or more distinct causes of action survives to or against the others, the action may proceed without bringing in the successor to the rights or liabilities of the deceased party; and the judgment will not affect him or his interest in the subject of the action; but when it appears proper so to do, the court may require or compel the successor, or a person who claims to be the successor, to be brought in as a party upon his own application or upon the application of a party to the action.

§ 89, C. Civ. P. **§ 5238. Power of court. Interpleader.** The court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must cause them to be brought in.

§ 90, C. Civ. P. **§ 5239. Intervention when.** Any person may before the trial intervene in an action or proceeding, who has an interest in the matter in litigation in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it was an original complaint.

§ 91, C. Civ. P. **§ 5240. Interpleader.** A defendant against whom an action is pending upon a contract, or for specific, real or personal property, may, at any time before answer upon affidavit that a person not a party to the action and without collusion with him makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct, and the court may in its discretion make the order.

CHAPTER 6.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

§ 5241. **Where subject matter is.** Actions for the following causes must be tried in the county in which the subject of the action or some part thereof is situated, subject to the power of the court to change the place of trial in the cases provided by statute: § 92, C. Civ. P. § 1, c. 23, 1887.

1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

2. For the partition of real property.

3. For the foreclosure of a mortgage of real property.

4. For the recovery of personal property distrained for any cause.

5. All actions brought on a policy of insurance to recover for loss or damage to the property insured shall be tried in the county or judicial subdivision where such property is situated at the time of its loss or damage.

§ 5242. **Where the cause arose.** Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial: § 93, C. Civ. P.

1. For the recovery of a penalty or forfeiture imposed by statute except that when it is imposed for an offense committed on a lake or river or other stream of water situated in two or more counties, the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed.

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him by virtue of his office, or against a person who by his command or his aid shall do anything touching the duties of such officer.

§ 5243. **Where any party resides.** In all other cases, subject to the power of the court to change the place of trial as provided by statute, the action shall be tried in the county in which the defendant or some of the defendants reside at the time of the commencement of the action; provided that, if such county is attached to another county for judicial purposes, the action shall be tried in the latter county; and if none of the defendants shall reside in the state, the action may be commenced in any county which the plaintiff shall designate in the summons. § 94, C. Civ. P. § 1, c. 35, 1881. am'd.

§ 5244. **Defendant must ask change.** If the county designated for that purpose in the complaint is not the proper county, the action may, notwithstanding, be tried therein, unless the defendant before the time for answering expires demands in writing that the trial be had in the proper county and the place of trial be thereupon changed by consent of the parties, or by order of the court as provided in this section. The court may change the place of trial in the following cases: § 95, C. Civ. P.

1. When the county designated for that purpose in the complaint is not the proper county.

2. When there is reason to believe that an impartial trial cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be promoted by the change.

§ 95, C. Civ. P.
am'd.

§ 5245. Transfer of papers. When the place of trial is changed all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed; and the papers shall be filed or transferred accordingly.

CHAPTER 7.

MANNER OF COMMENCING CIVIL ACTIONS.

§ 96, C. Civ. P.

§ 5246. Action, how commenced. Civil actions in the courts of this state shall be commenced by the service of a summons.

§ 97, C. Civ. P.
am'd.

§ 5247. Requisites of summons. The summons must contain the title of the action, specifying the court in which the action is brought, the names of the parties to the action and the name of the county in which the plaintiff desires the trial, and shall be subscribed by the plaintiff or his attorney, who must add to his signature his address, specifying a place within the state where there is a post office.

§ 5248. Form of summons. The summons exclusive of the title of the action and the subscription must be substantially in the following form, the blanks being properly filled:

The state of North Dakota to the above named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer upon the subscriber within thirty days after the service of this summons upon you, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated.....

§ 99, C. Civ. P.

§ 5249. Service of complaint. A copy of the complaint need not be served with the summons. In such case the summons must state where the complaint is or will be filed, and if the defendant within thirty days thereafter causes notice of appearance to be given, and in person or by attorney demands in writing a copy of the complaint, specifying a place within the state where it may be served, a copy thereof must within twenty days thereafter be served accordingly, and after such service the defendant has thirty days to answer, but only one copy need be served on the same attorney.

§ 100, C. Civ. P.

§ 5250. Notice of no personal claim. In the case of a defendant against whom no personal claim is made the plaintiff may deliver to such defendant with the summons a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects specific real or personal property, and that no personal claim is made against such defendant, in which case no copy of the complaint need be served on such defendant, unless within the time for answering he

shall in writing demand the same. If a defendant on whom such notice is served unreasonably defends the action, he shall pay costs to the plaintiff.

§ 5251. **Lis pendens. Effect of.** In an action affecting the title to real property the plaintiff at the time of filing the complaint or at any time afterwards, or the defendant, when he sets up an affirmative cause of action in his answer and demands substantive relief, at the time of filing his answer or at any time afterwards, if the same is intended to affect real property, may file for record with the register of deeds of each county in which the real property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the real property in that county affected thereby; from the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby; but if the action is for a foreclosure of a mortgage or the enforcement of a mechanic's or miner's lien, no such notice need be filed; and every person, whose conveyance or incumbrance is subsequently executed or subsequently recorded, shall be deemed a subsequent purchaser or incumbrancer and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he was a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice; provided, however, that such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant, within sixty days after such filing. And the court in which the action was commenced may, at any time on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized by this section to be canceled of record in whole or in part by the register of deeds of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record which shall refer to the order. Such cancellation may in like manner be made by the register of deeds upon a written request, directing such cancellation, signed by the party or the attorney of the party who caused such notice to be filed.

§ 101, C. Civ. P.
§ 1, c. 117, 1885.
§ 1, c. 22, 1887.
am'd.

§ 5252. **Summons, how served.** The summons shall be served by delivering a copy thereof as follows:

§ 102, C. Civ. P.
§ 1, c. 37, 1881.
am'd.

1. If the defendant is a minor under the age of fourteen years, to such minor personally and also to his father, mother or guardian; or if there is none within the state, then to any person having the care and control of such minor, or with whom he shall reside, or in whose service he shall be employed.

2. If the defendant is a person judicially declared to be of unsound mind or incapable of conducting his own affairs in consequence of habitual drunkenness or any other cause and for whom a guardian has been appointed, to such guardian and to the defendant personally.

3. If the defendant is a public corporation within this state, to the mayor or any of the aldermen of any city; to any of the commissioners of a county; to the president or any of the trustees of any incorporated town or village; to any of the supervisors of a civil township; to any of the members of a school district board. If the defendant is the state, to the governor or attorney general.

4. If the defendant is a domestic corporation, to the president or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof.

5. If the defendant is a foreign corporation, joint stock company or association, to the secretary of state, unless the defendant is an insurance company, in which case, to the commissioner of insurance, or to the president, secretary, cashier, treasurer, a director or managing agent thereof, if within the state, doing business for the defendant.

6. In all cases when a foreign corporation, joint stock company or association shall not have appointed either the secretary of state or commissioner of insurance, as the case may be, as its lawful attorney upon whom service of process may be made, and such foreign corporation, joint stock company or association cannot be personally served with such process according to the provisions of subdivision 5 of this section, it shall be lawful to serve such process on any person who shall be found within this state acting as the agent of, or doing business for, such corporation, joint stock company or association. But the service provided for in this subdivision can be made upon a foreign corporation, joint stock company or association only when it has property within the state or the cause of action arose therein.

7. In all other cases, to the defendant personally; and if the defendant cannot conveniently be found, by leaving a copy thereof at his dwelling house in the presence of one or more of the members of his family over the age of fourteen years; or if the defendant resides in the family of another, with one of the members of the family in which he resides over the age of fourteen years.

Service made in any of the modes provided in this section shall be taken and held to be personal service; and all writs, process or orders issued by any of the courts of this state or by the judges thereof in any action or proceeding shall be served in the manner and upon the persons or officers mentioned in this section and none other, except in cases when service of papers can be made upon an attorney after his appearance as provided by this code.

§ 103. C. Civ. P.
§ 1, c. 35, Sp.
1883.
§ 1, c. 138, 1885.

§ 5253. By whom summons served. The summons may be served by the sheriff of the county where the defendant may be found, or by any other person not a party to the action. The service shall be made and the summons returned with proof of the service to the person whose name is subscribed thereto with all reasonable diligence. The person subscribing the summons may, at his option by an indorsement on the summons, fix a time for the service thereof, and the service shall then be made accordingly; provided, however, that whenever any summons or other process shall be served by any person other than a sheriff or his duly appointed deputy, no fees shall be allowed therefor, either for mileage in traveling or making such service, or for serving said summons or process.

§ 104. C. Civ. P.,
am'd.

§ 5254. Service by publication. Cases and manner. Service of the summons in an action may be made on any defendant by publication thereof upon filing a verified complaint therein with the clerk of the district court of the county in which the action is commenced, setting forth a cause of action in favor of the plaintiff and against the defendant, and also filing an affidavit stating the place of defendant's residence, if known to the affiant, and if not known, stating that fact, and further stating:

1. That the defendant is not a resident of this state; or,

2. That the defendant is a foreign corporation, joint stock company or association and has no agent or person in this state upon whom service may be made under the provisions of section 5252; or,

3. That personal service cannot be made on such defendant within this state to the best knowledge, information and belief of the person making such affidavit, and in cases arising under this subdivision the affidavit shall be accompanied by the return of the sheriff of the county in which the action is brought, stating that after diligent inquiry for the purpose of serving such summons he is unable to make personal service thereof upon such defendant.

The affidavit shall also state or the complaint show:

1. That the defendant has property within this state or debts owing to him from residents thereof; or,

2. That the defendant is a resident of this state and has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself secreted therein with a like intent; or,

3. That the relief sought in the action consists wholly or partly in excluding the defendant from any interest in or lien upon specific real or personal property within this state, or in enforcing, regulating, defining or limiting such interest or lien in favor of either party to the action; or otherwise affecting the title to such property; or,

4. That the action is for divorce or for a decree annulling a marriage; or,

5. That the defendant in any of the cases mentioned in the last preceding subdivisions 1, 2, 3 and 4 is unknown to the plaintiff.

§ 5255. Number of publications. Service of the summons by publication may be made by publishing the same six times, once in each week for six successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county and if no newspaper is published in such county, then in a newspaper published at the seat of government of this state.

§ 5256. Mailing summons and complaint. A copy of the summons and complaint must within ten days after the first publication of the summons be deposited in some post office in this state, postage prepaid, and directed to the defendant to be served at his place of residence, unless the affidavit for publication states that the residence of the defendant is unknown.

§ 5257. Personal service equivalent to publication. After the affidavit for publication and the complaint in the action are filed, personal service of the summons and complaint upon the defendant out of the state shall be equivalent to and have the same force and effect as the publication and mailing provided for in this chapter.

§ 5258. Time when service must be made. The first publication of the summons or personal service of the summons and complaint upon the defendant out of the state must be made within sixty days after the filing of the affidavit for publication; if not so made, the action shall be deemed discontinued.

§ 5259. When service complete. Service by publication is complete upon the expiration of thirty-six days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, upon the expiration of fifteen days after the date of such service.

§ 104, C. Civ. P.
am'd.

§ 5260. When defendant permitted to defend. The defendant, upon whom service by publication is made or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action; and except in an action for divorce the defendant, upon whom service by publication is made or his representatives, may, in like manner upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof and within seven years after its rendition on such terms as may be just; and if the defense is successful and the judgment or any part thereof has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs; but the title to property sold under such judgment to a purchaser in good faith shall not be thereby affected.

§ 105, C. Civ. P.

§ 5261. Joint and several debtors. When the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

1. If the action is against defendants jointly indebted upon contract, he may proceed against the defendant served, unless the court otherwise directs; and if he recovers judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served; or,

2. If the action is against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

3. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them or any of them alone.

4. If the name of one or more partners shall for any cause have been omitted in any action, in which judgment shall have passed against the defendants named in the summons, and such omission shall not have been pleaded in such action, the plaintiff in case the judgment therein shall remain unsatisfied may by action recover of such partner separately upon proving his joint liability, notwithstanding he may not have been named in the original action; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action.

§ 107, C. Civ. P.
§ 1, c. 125, 1885.
am'd.

§ 5262. Proof of service. Acceptance. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same, must be as follows:

1. If served by the sheriff or other officer, his certificate thereof; or,

2. If by any other person, his affidavit thereof; or,

3. In case of publication an affidavit made as provided in section 5693 of this code and an affidavit of a deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or,

4. The written admission of the defendant.

In cases of service otherwise than by publication the certificate, affidavit or admission must state the time, place and manner of service.

§ 5263. Removal of pleadings, etc., from files. Any original pleading or paper in any civil action or proceeding, which by law is required to be filed in the office of the clerk of the court in

which such action or proceeding is pending, may upon the request of the party filing the same be removed from the files for the purpose of serving the same either within or without the state.

§ 5264. Jurisdiction. Appearance. From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him. § 108, C. Civ. P.

CHAPTER 8.

OF PLEADINGS IN CIVIL ACTIONS.

ARTICLE 1. — THE COMPLAINT.

§ 5265. Forms of pleading abolished. All forms of pleading heretofore existing are abolished; and hereafter the forms of pleading in civil actions in courts of record and the rules by which the sufficiency of the pleading is to be determined are those prescribed by this code. § 109, C. Civ. P.
am'd.

§ 5266. Complaint, what to contain. The first pleading on the part of the plaintiff is the complaint. The complaint shall contain: §§ 110, 111, C.
Civ. P.

1. The title of the cause, specifying the name of the court in which the action is brought, the name of county in which the plaintiff desires the trial to be had and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting a cause of action without unnecessary repetition.

3. A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money is demanded, the amount thereof shall be stated.

ARTICLE 2. — THE DEMURRER.

§ 5267. Defendant may demur or answer. The only pleading on the part of the defendant is either a demurrer or an answer. It must be served within thirty days after the service of the copy of the complaint. § 112, C. Civ. P.

§ 5268. When may demur. The defendant may demur to the complaint when it shall appear upon the face thereof, either: § 113, C. Civ. P.

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or,

2. That the plaintiff has not legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect of parties, plaintiff or defendant; or,

5. That several causes of action have been improperly united; or,

6. That the complaint does not state facts sufficient to constitute a cause of action.

- § 114, C. Civ. P. **§ 5269. Requisites of demurrer.** The demurrer shall distinctly specify the grounds of objection to the complaint. Unless it does so, it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein,
- § 115, C. Civ. P. **§ 5270. Amended complaint. Service, etc.** If the complaint is amended, a copy thereof must be served on the defendant, who must answer it within thirty days, or the plaintiff upon filing with the clerk due proof of the service and of the defendant's omission may proceed to obtain judgment as provided by section 5413, but when an application to the court for judgment is necessary, ten days' notice thereof must be given to the defendant.
- § 116, C. Civ. P. **§ 5271. When answer.** When any of the matters enumerated in section 5268 do not appear upon the face of the complaint, the objection may be taken by answer.
- § 117, C. Civ. P. **§ 5272. When objection waived.** If no such objection is taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

ARTICLE 3.—THE ANSWER.

- § 118, C. Civ. P. **§ 5273. Requisites of answer.** The answer of the defendant must contain:
1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.
 2. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition.
- § 119, C. Civ. P. **§ 5274. Requisites of counterclaim.** The counterclaim mentioned in the last section must be one existing in favor of a defendant and against a plaintiff between whom a several judgment might be had in the action, and arising out of one of the following causes of action:
1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.
 2. In an action arising on contract, any other cause of action arising also on contract and existing at the commencement of the action. The defendant may set forth by answer as many defenses and counterclaims as he may have, whether they are such as have been heretofore denominated legal, or equitable or both. They must each be separately stated and refer to the causes of action which they are intended to answer in such manner that they may be intelligibly distinguished.
- § 120, C. Civ. P. **§ 5275. Demurrer and answer.** The defendant may demur to one or more of several causes of action stated in the complaint and answer the residue.
- § 121, C. Civ. P. **§ 5276. Sham defenses.** Sham and irrelevant answers and defenses may be stricken out on motion and upon such terms as the courts may in their discretion impose.

ARTICLE 4.—THE REPLY.

§ 5277. **Reply when. Demurrer to answer.** When the answer contains new matter constituting a counterclaim, the plaintiff may within thirty days reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language without repetition any new matter not inconsistent with the complaint constituting a defense to such new matter in the answer; and the plaintiff may in all cases demur to an answer containing new matter, when upon its face it does not constitute a counterclaim or defense, and the plaintiff may demur to one or more of such defenses or counterclaims and reply to the residue of the counterclaims. And in other cases, when an answer contains new matter constituting a defense by way of avoidance, the court may in its discretion on the defendant's motion require a reply to such new matter; and in that case the reply shall be subject to the same rules as a reply to a counterclaim. § 122, C. Civ. P.

§ 5278. **Judgment on answer.** If the answer contains a statement of new matter constituting a counterclaim, and the plaintiff fails to reply or demur thereto within the time prescribed by law, the defendant may move on a notice of not less than ten days for such judgment as he is entitled to upon such statement, and if the case requires it, a writ of inquiry of damages may be issued. § 123, C. Civ. P.

§ 5279. **Demurrer to reply.** If a reply of the plaintiff to any defense set up by the answer of the defendant is insufficient, the defendant may demur thereto, and shall state the grounds thereof. § 124, C. Civ. P.

ARTICLE 5.—GENERAL RULES OF PLEADING.

§ 5280. **Pleading. Subscription. Verification.** Every pleading in a court of record must be subscribed by the party or his attorney; and when any pleading is verified, every subsequent pleading except a demurrer must be verified also. § 125, C. Civ. P.

§ 5281. **Requisites of verification.** The verification must be to the effect that the same is true to the knowledge of the person making it, except as to those matters stated upon information and belief, and as to those matters he believes it to be true, except when it is made by any person other than the party to the action, in which case it must be to the effect that the same is true to the best knowledge, information and belief of the person making it; and such verification must be by the affidavit of the party, his agent or attorney, or if there are several parties united in interest and pleading together, by one at least of such parties acquainted with the facts, or by the agent or attorney of such party. When a corporation is a party, the verification may be made by any officer thereof, and when the state, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted when an admission of the truth of the allegation might subject the party to a prosecution for felony, and no pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in such pleading. § 126, C. Civ. P.
§ 1, c. 149, 1885.
am'd.

- § 127, C. Civ. P. **§ 5282. Statement of account.** It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party, within ten days after the demand thereof in writing, a copy of the account, which, if the pleading is verified, must be verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account, when the one delivered is defective; and the court may in all cases order a bill of particulars of the claim of either party to be furnished.
- § 128, C. Civ. P. **§ 5283. Liberal construction.** In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed with a view of, substantial justice between the parties.
- § 129, C. Civ. P. **§ 5284. Making pleading definite.** If irrelevant or redundant matter is inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby. And when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.
- § 130, C. Civ. P. **§ 5285. Pleading a judgment.** In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation is controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.
- 131, C. Civ. P. **§ 5286. Conditions precedent.** In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegations are controverted, the party pleading shall be bound to establish on the trial the facts showing such performance. In an action or defense founded upon an instrument for the payment of money only, it shall be sufficient for a party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specified sum which he claims.
- § 132, C. Civ. P. **§ 5287. Private statute.** In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.
- § 133, C. Civ. P.
am'd. **§ 5288. Libel or slander.** In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation is controverted, the plaintiff shall be bound to establish on the trial that it was so published or spoken.
- § 134, C. Civ. P. **§ 5289. Same. Defendant's answer.** In the actions mentioned in the last section, the defendant may in his answer allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and whether he

proves the justification or not, he may give in evidence the mitigating circumstances.

§ 5290. Answer of possession. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title to such real property. § 135, C. Civ. P.

§ 5291. Joinder of actions. The plaintiff may unite in the same complaint several causes of action, whether they are such as have been heretofore denominated legal or equitable, or both, where they all arise out of: § 136, C. Civ. P. am'd.

1. The same transaction, or transactions connected with the same subject of action; or,
2. Contract, express or implied; or,
3. Injuries, with or without force, to person and property, or either; or,
4. Injuries to character; or,
5. Claims to recover real property with or without damages for the withholding thereof, and the rents and profits of the same, or waste committed thereon; or,
6. Claims to recover personal property with or without damages for the withholding thereof; or,
7. Claims against a trustee by virtue of a contract, or by operation of law.

But the causes of action so united must all belong to one of these classes and, except in actions for the foreclosure of mortgages, must affect all the parties to the action, and not require different places of trial, and must be separately stated.

§ 5292. Allegations. When deemed true or denied. Every material allegation of the complaint, not controverted by the answer as prescribed in section 5273, and every material allegation of new matter in the answer, constituting a counterclaim, not controverted by the reply as prescribed in section 5277, shall for purposes of the action be taken as true. But the allegation of new matter in the answer, not relating to a counterclaim, or of new matter in a reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require. § 137, C. Civ. P.

ARTICLE 6. — MISTAKES IN PLEADING AND AMENDMENTS.

§ 5293. Variance material and misleading. No variance between the allegation in a pleading and the proof shall be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been misled, the fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just. § 138, C. Civ. P. am'd.

§ 5294. If not material. When the variance is not material as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. § 139, C. Civ. P.

§ 5295. Failure to prove variance. When, however, the allegation of the cause of action or defense to which the proof is

directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

- § 141, C. Civ. P. **§ 5296. Amendments. When and how.** Any pleading may be once amended by the party of course without costs and without prejudice to the proceedings already had at any time within twenty days after it is served, or at any time before the period for answering it expires; or it can be so amended at any time within twenty days after the service of the answer or demurrer to such pleading unless it is made to appear to the court that it was done for the purpose of delay and the plaintiff or defendant will thereby lose the benefit of a term for which the cause is or may be noticed; and if it appears to the court that such amendment was made for such purpose, the same may be stricken out and such terms imposed as to the court may seem just. In such case a copy of the amended pleading must be served on the adverse party. After the decision of a demurrer the court may, in its discretion, if it appears that the demurrer was interposed in good faith, allow the party to plead over upon such terms as may be just. If the demurrer is allowed for the cause mentioned in the fifth subdivision of section 5268, the court may, in its discretion and upon such terms as may be just, order the action to be divided into as many actions as may be necessary to the proper determination of the causes of action therein mentioned.
- § 142, C. Civ. P. **§ 5297. Court may amend. Terms.** The court may, before or after judgment in furtherance of justice and on such terms as may be proper, amend any pleading, process or proceeding by adding or striking out the name of any party; or by correcting a mistake in the name of a party, or a mistake in any other respect; or by inserting other allegations material to the cause; or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved.
- § 143, C. Civ. P. **§ 5298. Pleading after time.** The court may likewise, in its discretion and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited by this code, or by an order enlarge such time; and may also, in its discretion and upon such terms as may be just at any time within one year after notice thereof, relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect, and may supply an omission in any proceeding; and whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may, in like manner and upon like terms, permit an amendment of such proceedings, so as to make it conformable thereto.
- § 144, C. Civ. P. **§ 5299. Unknown name.** When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered the pleading or proceeding may be amended accordingly.
- § 145, C. Civ. P. **§ 5300. Trivial defects disregarded.** The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

§ 5301. **Supplemental pleading.** The plaintiff and defendant respectively may be allowed on motion to make a supplemental complaint, answer or reply, alleging facts material to the case occurring after the former complaint, answer or reply, or of which the party was ignorant when his former pleading was made. § 146, C. Civ. P.

CHAPTER 9.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

§ 5302. **Classified.** The provisional remedies in civil actions are: § 147, C. Civ. P.

1. Arrest and bail.
2. Claim and delivery of personal property.
3. Injunction.
4. Attachment.
5. Receivers.
6. Deposit in court.

ARTICLE 1.—ARREST AND BAIL.

§ 5303. **Arrest limited. Contempt.** No person shall be arrested in a civil action except as prescribed by this code; but this provision shall not apply to proceedings for contempt. § 148, C. Civ. P.

§ 5304. **Defendant may be arrested, when.** The defendant may be arrested as hereinafter prescribed in the following cases: § 149, C. Civ. P. am'd.

1. In an action for the recovery of damages for an injury to person or character, or for injuring or for wrongfully taking, detaining or converting property.

2. In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or other person in a fiduciary capacity, in the course of his employment as such.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff and with the intent that it should not be found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or in incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

5. When the defendant has removed or disposed of his property or is about to do so with the intent to defraud his creditors.

But no female shall be arrested in any action except for willful injury to person, character or property.

§ 5305. **Where order obtained.** An order for the arrest of the defendant must be obtained from a judge of the court in which the action is brought. § 150, C. Civ. P.

§ 151, C. Civ. P. **§ 5306. Basis of order.** The order may be made whenever it appears to the judge by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists and that the case is one of those mentioned in section 5304. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest is made, the affidavit must be filed in the office of the clerk of the court.

§ 152, C. Civ. P. **§ 5307. Undertaking from plaintiff.** Before making the order the judge shall require a written undertaking on the part of the plaintiff with or without sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking is executed by the plaintiff without sureties, he shall annex thereto an affidavit that he is a resident and householder or freeholder within the state, and worth double the sum specified in the undertaking over all his debts and liabilities and exclusive of all property exempt from execution by the laws of this state.

§ 153, C. Civ. P.
am'd. **§ 5308. When order issued and served.** The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the sheriff of the county, where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and return the order at a place and time therein mentioned to the plaintiff or his attorney by whom it shall be subscribed or indorsed. But such order of arrest shall be of no avail and shall be vacated or set aside on motion, unless the same is served upon the defendant as provided by law before the docketing of any judgment in the action; and the defendant shall have thirty days after the service of the order of arrest, in which to answer the complaint in the action and to move to vacate the order of arrest or to reduce the amount of bail.

§ 154, C. Civ. P. **§ 5309. Papers served on defendant.** The affidavit and order of arrest shall be delivered to the sheriff, who upon arresting the defendant shall deliver to him a copy thereof.

§ 155, C. Civ. P. **§ 5310. Sheriff's duties. Bail.** The sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law, and may call the power of the county to his aid in the execution of the arrest as in case of process. The defendant may give bail whenever arrested at any hour of the day or night, and must have reasonable opportunity to procure it before being committed to prison.

§ 156, C. Civ. P. **§ 5311. Discharge.** The defendant at any time before execution shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest as provided in this article.

§ 157, C. Civ. P. **§ 5312. Bail how given.** The defendant may give bail by causing a written undertaking in the sum specified in the order of arrest to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render himself answerable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment thereon, or if he is arrested for the

cause mentioned in the third subdivision of section 5304, an undertaking to the same effect as that provided in section 5336.

§ 5313. Surrender by bail. At any time before a failure to comply with the undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested in the following manner: § 158, C. Civ. P.

1. A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon as upon an order of arrest, and shall by a certificate in writing acknowledge the surrender.

2. Upon the production of a copy of the undertaking and sheriff's certificate, a judge of the court may, upon a notice to the plaintiff of eight days with a copy of the certificate, order that the bail be exonerated; and on filing the order and the papers used on said application they shall be exonerated accordingly. But this section shall not apply to an arrest for a cause mentioned in subdivision 3 of section 5304, so as to discharge the bail from an undertaking given to the effect provided by section 5336.

§ 5314. Bail may arrest. For the purpose of surrendering the defendant the bail at any time or place before they are finally charged may themselves arrest him, or by a written authority indorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so. § 159, C. Civ. P.

§ 5315. Action against bail. In case of failure to comply with the undertaking the bail may be proceeded against by action only. § 160, C. Civ. P.

§ 5316. Bail exonerated. The bail may be exonerated either by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested in execution thereof, within twenty days after the commencement of the action against the bail or within such further time as may be granted by the court. § 161, C. Civ. P.

§ 5317. Plaintiff may except to bail. Within the time limited for that purpose the sheriff shall deliver the order of arrest to the plaintiff, or the attorney by whom it is subscribed, with his return indorsed, and a certified copy of the undertaking of the bail. The plaintiff within ten days thereafter may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it and the sheriff shall be exonerated from liability. § 162, C. Civ. P.

§ 5318. Justification. On the receipt of such notice the sheriff or defendant may, within ten days thereafter, give to the plaintiff, or the attorney by whom the order of arrest is subscribed, notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before a judge of the court at a specified time and place; the time to be not less than five nor more than ten days thereafter. In case other bail is given there shall be a new undertaking in the form prescribed in section 5312. § 163, C. Civ. P.

§ 5319. Requisites of bail. The qualifications of bail must be as follows: § 164, C. Civ. P.

1. Each of them must be a resident and householder or freeholder within the state.

2. They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, or a justice of the peace, on justification, may allow more than two bail

to justify severally in amounts less than that expressed in the order, if the whole justification is equivalent to that of two sufficient bail.

§ 165, C. Civ. P.
§ 1, c. 21, 1889.
am'd.

§ 5320. Examination of bail. For the purpose of justification each of the bail shall attend before any judge of a district court, or a justice of the peace, at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency in such manner as the judge or justice of the peace in discretion may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff. The costs of the justification shall be paid by the party offering the bail, if the same is found not sufficient, but if sufficient then the party excepting shall pay such costs. Such costs shall be returned by the officer with his report of the justification and shall be taxed by the court in which the action is pending as other costs are taxed.

§ 166, C. Civ. P.

§ 5321. Allowance of. If the judge or justice of the peace finds the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon and cause them to be filed with the clerk; and the sheriff shall thereupon be exonerated from liability.

§ 167, C. Civ. P.

§ 5322. Deposit. Discharge. The defendant may at the time of his arrest instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and the defendant shall be discharged out of custody.

§ 168, C. Civ. P.

§ 5323. Payment into court. The sheriff shall within four days after the deposit pay the same into court, and shall take from the officer receiving the same two certificates of such payment, one of which he shall deliver to the plaintiff and the other to the defendant or his attorney. For any default in making such payment the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

§ 169, C. Civ. P.

§ 5324. Refunded on approved bail. If money is deposited as provided in the last two sections, bail may be given and justified upon notice as prescribed in section 5318 at any time before judgment; thereupon the judge, before whom the justification is had, shall direct in the order of allowance, that the money deposited be refunded by the sheriff to the defendant and it shall be refunded accordingly.

§ 170, C. Civ. P.
am'd.

§ 5325. Applied on judgment. When money shall have been so deposited, if it remains on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall under the direction of the court apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

§ 171, C. Civ. P.

§ 5326. Sheriff's liability. If after being arrested, when there is a jail to which the defendant may be committed, the defendant escapes or is rescued, or bail is not given or justified, or a deposit is not made instead thereof, the sheriff shall himself be liable as bail. But he may discharge himself from such liability by the giving and justification of bail as provided in sections 5318, 5319, 5320 and 5321 at any time before process against the person of the defendant to enforce an order or judgment in the action.

§ 5327. **Judgment against sheriff.** If a judgment is recovered against the sheriff upon his liability as bail and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on the official bond of the sheriff to collect the deficiency as in other cases of delinquency. § 172, C. Civ. P.

§ 5328. **Bail liable to sheriff.** The bail taken upon the arrest shall, unless they justify or other bail is given or justified, be liable to the sheriff by action for damages which he may sustain by reason of such omission. § 173, C. Civ. P.

§ 5329. **Motion to vacate arrest.** A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail. § 174, C. Civ. P.

§ 5330. **Heard upon affidavits.** If the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made. § 175, C. Civ. P.

ARTICLE 2. — CLAIM AND DELIVERY OF PERSONAL PROPERTY.

§ 5331. **When may claim.** The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons or at any time before answer, claim the immediate delivery of such property as provided in this article. § 176, C. Civ. P.

§ 5332. **Plaintiff's affidavit.** When a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf stating:

1. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof according to his best knowledge, information and belief.

4. That the same has not been taken for a tax, assessment or fine pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and,

5. The actual value of the property.

§ 5333. **Requisition to sheriff.** The plaintiff may, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county, where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff. § 178, C. Civ. P.

§ 5334. **Security by plaintiff.** Upon the receipt of the affidavit and notice with a written undertaking executed by one or more sufficient sureties approved by the sheriff, to the effect that they are bound in double the value of the property as stated in the affidavit for the prosecution of the action for the return of the property to the defendant, if return thereof is adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent and retain it in his custody. He shall also without delay serve on the defendant a copy of the affidavit, notice and undertaking by deliver-

ing the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion.

§ 180, C. Civ. P.

§ 5335. Exceptions by defendant. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as bail upon an arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant excepts to the sureties, he cannot reclaim the property as provided in the next section.

§ 181, C. Civ. P.

§ 5336. Redelivery to defendant. At any time before the delivery of the property to the plaintiff the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if such delivery is adjudged and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property is not so required within three days after the taking and service of notice on the defendant, it shall be delivered to the plaintiff except as provided in section 5341.

§ 182, C. Civ. P.

§ 5337. Justification. The defendant's sureties upon a notice to the plaintiff of not less than two nor more than six days shall justify before a judge or justice of the peace in the same manner as bail on arrest; upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties, until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

§ 183, C. Civ. P.

§ 5338. Same. The qualifications of sureties and their justification shall be as are prescribed by sections 5319 and 5320 in respect to bail upon an order of arrest.

§ 184, C. Civ. P.

§ 5339. Concealed property. If the property, or any part thereof, is concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it is not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

§ 185, C. Civ. P.

§ 5340. Keeping property. When the sheriff shall have taken property as in this article provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

§ 186, C. Civ. P.

§ 5341. Claim by third persons. If the property taken is claimed by any other person than the defendant or his agent, and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff on demand

of him or his agent shall indemnify the sheriff against such claim by an undertaking executed by two sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified in the affidavit of the plaintiff exclusive of property exempt from execution, and freeholders or householders of the county. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

§ 5342. **Papers filed with clerk.** The sheriff shall file the notice and affidavit with his proceedings thereon with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein. § 187, C. Civ. P.

ARTICLE 3. — INJUNCTION.

§ 5343. **Injunction by order.** The writ of injunction as a provisional remedy is abolished, and an injunction by order is substituted therefor. The order may be made by the court in which the action is brought, or by a judge thereof in the cases provided in the next section and, when made by a judge, may be enforced as the order of the court. § 188, C. Civ. P.

§ 5344. **Cases when granted.** An injunction may be granted in either of the following cases: § 189, C. Civ. P. am'd.

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or,

2. When during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

3. And, when during the pendency of an action it shall appear by affidavit that the defendant threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary injunction may be granted to restrain such removal or disposition.

§ 5345. **Time. Papers served.** The injunction may be granted at the time of commencing the action or at any time afterwards before judgment upon its appearing satisfactorily to the court or judge by the affidavit of the plaintiff, or of any other person, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction. § 190, C. Civ. P. am'd.

§ 5346. **After answer.** An injunction shall not be allowed after the defendant shall have answered unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction. § 191, C. Civ. P.

§ 5347. **Security. Damages.** When no provision is made by statute as to security upon an injunction, the court or judge shall require a written undertaking on the part of the plaintiff with or without sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, § 192, C. Civ. P.

as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise as the court shall direct.

§ 183. C. Civ. P. **§ 5348. Order to show cause.** If the court or judge deems it proper that the defendant, or any of the several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted; and the defendant may in the meantime be restrained.

§ 194. C. Civ. P. **§ 5349. Against corporation.** An injunction to suspend the general and ordinary business of a corporation must not be granted without due notice of the application therefor to the proper officer of the corporation, except when the state is a party to the proceeding.

§ 195. C. Civ. P. **§ 5350. Application to vacate.** If the injunction is granted by a judge of the court without due notice, the defendant at any time before the trial may apply, upon notice to a judge of the court in which the action is brought, to vacate or modify the same. The application may be made upon the complaint and the affidavits on which the injunction was granted or upon affidavits on the part of defendant with or without the answer.

§ 196. C. Civ. P. **§ 5351. Counter affidavits.** If the application is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other proofs in addition to those on which the injunction was granted.

ARTICLE 4. — ATTACHMENT.

§ 197. C. Civ. P. **§ 5352. When attachment may issue.** In an action on a contract or judgment for the recovery of money only, or for the wrongful conversion of personal property, the plaintiff at or after the commencement thereof may have the property of the defendant attached in the following cases:

1. When the defendant is not a resident of this state or is a foreign corporation.
2. When the defendant has absconded or concealed himself.
3. When the defendant has removed or is about to remove his property or a material part thereof from this state, not leaving enough therein for the payment of his debts.
4. When the defendant has sold, assigned, transferred, secreted or otherwise disposed of, or is about to sell, assign, transfer, secrete or otherwise dispose of his property, with intent to cheat or defraud his creditors or to hinder or delay them in the collection of their debts.
5. When the defendant is about to remove his residence from the county where he resides with the intention of permanently changing the same and fails or neglects on demand to give security for the debt upon which the action is commenced.
6. When the debt upon which the action is commenced was incurred for property obtained under false pretenses.
7. When the defendant is about to remove his property or a material part thereof from the state with the intent or to the effect of cheating or defrauding his creditors, or hindering or delaying them in the collection of their debts.

§ 5353. **Attachment on claim before due.** The plaintiff may bring an action on his claim before it is due and have the property of the defendant attached in any of the cases mentioned in the preceding section except in subdivisions 1, 2 and 5. The proceedings on such attachment shall be conducted in all respects as if the claim was due, but judgment must not be rendered in the action until the debt upon which such action is commenced shall become due, and the complaint must state that the action is commenced before the debt is due for the purpose of obtaining the issuance of an attachment, but need not state the grounds of the attachment; and upon the discharge of such attachment except under the provisions of section 5371 the action shall be dismissed, but without prejudice to the bringing of a new action.

§ 218, C. Civ. P.
2, c. 32, 1881.
1, c. 18, 1885.
am'd.

§ 5354. **When action deemed commenced.** Within the meaning of the last two sections an action shall be deemed commenced when the summons is issued, but personal service of such summons must be made or publication thereof commenced within sixty days after the issuance of the warrant of attachment.

§ 197, C. Civ. P.
am'd.

§ 5355. **Warrant by whom issued.** The warrant of attachment shall be issued by the clerk of the court in which the action is commenced, shall be attested in the name of the presiding judge and sealed with the seal of the court.

§ 198, C. Civ. P.
am'd.

§ 5356. **Warrant. Upon what issued.** The warrant shall issue upon a verified complaint, setting forth a proper cause of action for attachment in favor of the plaintiff and against the defendant, and an affidavit, setting forth in the language of the statute one or more of the grounds of attachment enumerated in section 5352, if the claim is due upon which the action is commenced; and if not due, one or more of the grounds of attachment enumerated in subdivisions 3, 4, 6 and 7 of that section.

§ 199, C. Civ. P.
§ 1, c. 32, 1881.
am'd.

§ 5357. **Requisites of warrant.** The warrant must briefly recite the statutory grounds of the attachment, but shall not set forth plaintiff's cause of action, and must be directed to the sheriff of any county in which property of such defendant may be and must require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand with costs and disbursements, the amount of which demand must be stated in the warrant in conformity with the complaint, unless the defendant delivers to him an undertaking in favor of the plaintiff with sufficient surety to the effect that he will pay any judgment which the plaintiff may obtain against him in the action, or an undertaking with like surety to the effect that the property of such defendant, which has been or is about to be attached, shall be forthcoming in substantially as good condition as it is at the time of giving the undertaking to answer such judgment, which undertaking shall be in an amount equal to the value of such property according to the sheriff's inventory. Several warrants may be issued at the same time to the sheriffs of different counties.

§ 201, C. Civ. P.
am'd.

§ 5358. **Plaintiff's undertaking. Exceptions thereto.** Before issuing the warrant the clerk must require a written undertaking on the part of the plaintiff with sufficient surety, to the effect that if the defendant recovers judgment or the attachment is set aside by the order of the court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by

§ 200, C. Civ. P.
am'd.

reason of the attachment, not exceeding the sum named in the undertaking, which must be at least the amount of the claim specified in the warrant and in no case less than two hundred and fifty dollars. The defendant may at any time within ten days after a levy under a warrant of attachment except to the sufficiency of the surety upon such undertaking. Thereupon the surety must justify upon the like notice and in like manner as bail upon an arrest; or a new undertaking must be given with new surety which shall be filed as provided in section 5359, and thereupon the same proceedings may be had upon such undertaking as upon the original undertaking. If the defendant does not except as prescribed in this section he is deemed to have waived all objection to the surety. If the attachment is set aside by order of the court the defendant may bring an action upon such undertaking without first obtaining judgment against the plaintiff in the action in which such undertaking was given.

§ 5359. What papers must be filed. The plaintiff at the time of procuring the warrant must file in the office of the clerk of the court, in which the action is commenced, the complaint, affidavit and undertaking upon which such warrant is issued.

§ 202, C. Civ. P.
am'd.

§ 5360. Execution of warrant. The sheriff must immediately execute the warrant by levying upon so much of the personal and real property of the defendant within his county, not exempt from execution, as will satisfy the plaintiff's demand with the costs and disbursements. He must take into his custody all books of account, vouchers and other papers relating to the personal property attached, and all evidences of defendant's title to the real property attached, which he must safely keep to be disposed of as prescribed in this article. The sheriff, to whom a warrant of attachment is delivered, may levy from time to time and as often as is necessary, until the amount for which it was issued has been secured, or final judgment has been rendered in the action.

§ 203, C. Civ. P.
§ 1, c. 24, 1887.

§ 5361. Inventory to be made. Perishable property. Immediately upon making such seizure the sheriff shall make a true and complete inventory of all the property so seized and of the books, vouchers and papers taken into his custody, stating therein the estimated value of the several articles and kinds of personal property, enumerating such of them as are perishable, and giving a description of the real property so attached, which inventory must be signed by the sheriff. Any subsequent execution of the warrant of attachment upon other property of the debtor must be made, and an inventory thereof made in like manner. The sheriff shall within twenty days after making such seizure file such inventory and a return of his doings upon such attachment with the clerk of the district court who issued the warrant. In case a forthcoming undertaking is given by the defendant under the provisions of section 5357 for property before a levy has been made thereon, the sheriff shall make and return an inventory of such property in accordance with the provisions of this section.

§ 5362. Attachment, how levied. A levy under a warrant of attachment must be made as follows:

1. Upon real property, by the sheriff's filing with the register of deeds of the county, in which the property is situated, a notice of the attachment subscribed by him, stating the names of the parties to the action, the amount of the plaintiff's claim as stated in the warrant and a description of the property levied upon, which notice

must be recorded and indexed by the register of deeds in like manner and in the same book as a notice of the pendency of an action.

2. Upon personal property which by reason of its bulk or other cause cannot be immediately removed, by the sheriff's filing with the register of deeds a notice of the same kind as described in subdivision 1 of this section; and such levy shall be equally valid and effectual as if the articles had been seized and the possession and control thereof retained by the officer.

Upon cattle or horses running at large and commonly known as range stock, between the first day of November and the next succeeding fifteenth day of May, by the sheriff's filing with the register of deeds of the county in which such property is running at large a notice of the same kind as described in subdivision 1 of this section, specifying the number as near as may be and containing a description of such stock by marks and brands; and such levy shall be equally valid and effectual as if such cattle and horses had been seized and the possession and control thereof retained by the officer.

The register of deeds shall receive and file all such notices, numbering the same consecutively, and must keep the same in his office in regular and orderly file and shall make an entry thereof in a book to be kept for that purpose, and designated as the index of attachments, in the order in which they are received, which entry shall contain in separate columns the names of the defendants alphabetically arranged, the names of the plaintiffs, the number indorsed upon the notice, the amount claimed by the plaintiff and the time of the filing.

Notwithstanding the provisions of this subdivision an attachment may, by direction of the plaintiff or his attorney, be levied upon the property mentioned in this subdivision in accordance with subdivision 3 of this section; but if additional costs are made by such a levy the same shall not be allowed to the plaintiff, if in the judgment of the court the taking of the property into the custody of the sheriff was unnecessary.

3. Upon personal property capable of manual delivery, including bonds, promissory notes or other instruments for the payment of money, by taking the same into the sheriff's actual custody. He must thereupon without delay deliver a copy of the warrant to the person from whose custody such property is taken.

4. Upon other personal property by leaving a copy of the warrant and a notice showing the property attached with the person holding the same; or, if it consists of a demand other than as specified in the last subdivision, with the person against whom it exists, or if it consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier or managing agent thereof.

The lien of the attachment shall be effectual from the time when a levy is made in accordance with the foregoing provisions.

§ 5363. Pledged or mortgaged property may be levied on. When property is pledged or mortgaged for the payment of money or the performance of any contract or agreement, the right and interest in such property of the person pledging or mortgaging the same may be attached and sold on execution, and the purchaser at such sale shall acquire all the right and interest of the defendant therein.

§ 5364. Warrant and notice of levy to be served. In the cases mentioned in subdivisions 1 and 2 of section 5362 the sheriff shall within thirty days after the levy of an attachment serve the warrant of attachment together with a notice of levy, describing the particular property levied on in the manner provided for the service of a summons in section 5252, as follows:

1. If the levy is made upon real property, upon the occupant thereof, if any.

2. If upon personal property mentioned in said subdivision 2, upon the person in whose custody the same may be.

The failure of the sheriff to serve such warrant or notice shall not invalidate the levy, but the sheriff shall be liable to the person whose property is attached for any damages which he may sustain by reason of such failure.

§ 206, C. Civ. P.
am'd.

§ 5365. Property claimed by third person. Claim how made. If any property levied upon by the sheriff by virtue of a warrant of attachment is claimed by any other person than the defendant and such person, his agent or attorney, makes affidavit of his title thereto or right to the possession thereof, stating the value thereof and the ground of such title or right, the sheriff may release such levy, unless the plaintiff on demand indemnifies the sheriff against such claim by an undertaking executed by a sufficient surety; and no claim to such property by any other person than the defendant shall be valid against the sheriff, unless so made; and notwithstanding such claim, when so made he may retain such property under levy a reasonable time to demand such indemnity.

§ 209, C. Civ. P.
am'd.

§ 5366. Certificate of defendant's interest. Upon the application of the sheriff, holding a warrant of attachment, the president or other head of a corporation, or the secretary, cashier or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note or other instrument for the payment of money belonging to the defendant, must furnish to the sheriff a certificate under his hand, specifying the rights or number of shares of the defendant in the stock of the corporation with all dividends declared or incumbrances thereon; or the amount, nature and description of the property held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires. If such officer, debtor or individual refuses to furnish such certificate, or if it is made to appear by affidavit or otherwise to the satisfaction of the court or judge thereof, that there is reason to suspect that any certificate given by him is untrue or that it fails to set forth fully the facts required to be shown thereby, he may be required by order of the court or judge to attend before him and be examined on oath concerning the same and obedience to such order may be enforced by proceedings as for a contempt.

§ 204, C. Civ. P.
am'd.

§ 5367. Custody and collection of property. Action by sheriff. The sheriff must, subject to the direction of the court or judge, collect and receive all debts, effects and things in action attached by him. He may maintain any action or special proceeding in his name or in the name of the defendant, which is necessary for that purpose, or to reduce to his actual possession an article of personal property capable of manual delivery, but of which he has been unable to obtain possession and in such action to obtain possession of personal property the defendant may be enjoined from disposing of such

property; and he may discontinue such an action or special proceeding at such time and on such terms as the court or judge directs.

§ 5368. **Plaintiff may prosecute actions. Undertaking.** The actions and special proceedings herein authorized to be commenced by the sheriff may be prosecuted by the plaintiff or under his direction upon the delivery by him to the sheriff of an undertaking executed by sufficient surety, to the effect that the plaintiff will indemnify the sheriff for all damages, costs and expenses on account thereof, not exceeding two hundred and fifty dollars in any one action. Such surety shall in all cases, when required by the sheriff, justify in like manner as bail upon an arrest.

§ 211, C. Civ. P.
am'd.

§ 5369. **Property perishable or likely to depreciate in value may be sold.** If property attached is perishable the court may, by an order made with or without notice as the urgency of the case may require, direct the sheriff to sell such property at public auction and thereupon the sheriff must sell it accordingly. If the attached property is of such a character that it is liable greatly to depreciate in value during the pendency of the action or consists of live animals, the same proceedings may be had as in the case of perishable property, but such notice of the application for the order shall be given to the parties to the action as the court prescribes. The order directing the sale must fix the time and place of sale, and notice thereof must be given in such manner and for such time as is prescribed in the order.

§ 205, C. Civ. P.
am'd.

§ 5370. **Defendant may apply for discharge.** The defendant may at any time after he has appeared in the action and before final judgment apply to the clerk who issued the attachment or to the court to discharge the attachment as to the whole or any part of the property attached.

§ 213, C. Civ. P.
am'd.

§ 5371. **Undertaking for discharge.** Upon such application the defendant must give an undertaking with sufficient surety to the effect that the property of such defendant, which has been attached, shall be forthcoming in substantially as good condition as it is at the time of the application to answer any judgment which the plaintiff may recover against him in the action, which undertaking shall be in an amount equal to the value of the property according to the sheriff's inventory; or the defendant may at his election give an undertaking with sufficient surety to the effect that he will on demand pay to the plaintiff the amount of any judgment which may be recovered in the action against him not exceeding a sum specified in the undertaking with interest. The sum so specified must be at least equal to double the amount of the plaintiff's demand as specified in the warrant of attachment; or, at the option of the defendant, equal to double the appraised value of the property attached according to the sheriff's inventory or, if the application is to discharge the attachment as to a part only of the property attached, equal to double the appraised value of that part.

§ 214, C. Civ. P.
am'd.

§ 5372. **Undertaking when there are two or more defendants.** When there are two or more defendants and an application is made as prescribed in the last two sections by one or more, but not all of them, the undertaking must provide for the payment of any judgment, which may be recovered against any of the defendants in the action, unless the applicant makes proof by affidavit to the satisfaction of the court, that the property in respect to which the application is made belongs to him separately; in which case the under-

taking must provide for the payment of any judgment, which may be recovered in the action against the applicant either alone or jointly with any other defendant. When an application is made as prescribed in this section, at least two days' notice thereof with a copy of the affidavit must be served upon the plaintiff's attorney, who may oppose the application by affidavit on the ground that one or more of the other defendants own or have an interest in the property.

§ 216, C. Civ. P.
am'd.

§ 5373. Partnership property. Undertaking. If the warrant of attachment is levied upon the interest of one or more partners in personal property of the firm, the other partners, or one or more of them, may at any time before judgment apply to the court from which the warrant of attachment issued, or a judge thereof, upon affidavit, stating such fact, for an order to discharge the attachment as to the partnership property. The applicant must give an undertaking with sufficient surety to the effect, that if judgment shall be rendered in the action in favor of the plaintiff, they will pay to the sheriff on demand the amount of defendant's interest in such partnership property, the amount of such interest to be determined by reference or otherwise as the court may direct. The amount of such undertaking must be fixed by the court or judge thereof, and must not be less than the value of the interest of the defendant in the personal property of the partnership; and for the purpose of fixing the amount of the undertaking the court may hear affidavits or oral testimony respecting the value of the defendant's interest in the attached property.

§ 5374. Undertaking must be filed and served. Exceptions thereto. An undertaking given as prescribed in the last three sections must be forthwith filed with the clerk. A copy thereof with a notice of the filing must be forthwith served upon the plaintiff's attorney; who may within three days thereafter give notice to the sheriff that he excepts to the sufficiency of the surety. Thereupon the surety must justify upon the like notice and in like manner as bail upon an arrest; or a new undertaking must be given with new surety and thereupon the same proceedings must be had upon such undertaking as upon the original undertaking. If the plaintiff does not except as prescribed in this section he is deemed to have waived all objection to the surety. The sheriff shall be responsible for the sufficiency of the surety upon any undertaking given by the defendant and may retain possession of the property attached and the proceeds thereof in his hands, until the objection to the surety is either waived as above provided, or until he justifies or new surety is substituted and justifies.

§ 5375. Giving undertaking not waiver of right to move discharge. The giving of any of the undertakings mentioned in this article by the defendant shall not operate as a waiver of his right to move to discharge the attachment, and if such attachment is discharged on motion any undertaking given by the defendant shall be null and void and shall be returned to him.

§ 215, C. Civ. P.
§ 1, c. 83, 1881.
am'd.

§ 5376. Who may move discharge. In all cases the defendant, or any person who has acquired a lien upon or interest in the defendant's property after it was attached, may move to discharge the attachment. If the motion is made upon affidavit on the part of the defendant, or a person who has acquired a lien upon or interest in the defendant's property after it was attached, but not otherwise, the plaintiff may oppose the same by affidavit or other proof in addition

to the affidavit upon which the attachment was granted; and in such case the defendant, or person who has acquired a lien upon or interest in the defendant's property after it was attached, may sustain the motion by affidavit or other proof in rebuttal of the affidavits or other proof offered and submitted on the part of the plaintiff to oppose the motion. And if on such hearing it appears to the satisfaction of the court or judge that the attachment was irregularly issued, or that the affidavit upon which it was issued is untrue, the attachment must be discharged.

§ 5377. Proceedings upon discharge. When the warrant of attachment is vacated or annulled or the attachment is discharged upon the application of the defendant, or person who has acquired a lien upon or interest in the defendant's property after it was attached, the sheriff must deliver over to the defendant or to the person entitled thereto upon reasonable demand all the attached personal property remaining in his hands, or that portion thereof as to which the attachment is discharged, or the proceeds thereof, if it has been sold by him.

§ 5378. Judgment how satisfied. In case judgment is entered for the plaintiff in such action, the sheriff shall satisfy the same out of the property attached by him, if it shall be sufficient for that purpose: § 210, C. Civ. P.

1. By paying over to such plaintiff the proceeds of all sales of perishable property, and of any vessel or share or interest in any vessel sold by him, or of any debts or credits collected by him or so much as shall be necessary to satisfy such judgment.

2. If any balance remains due and an execution shall have been issued on such judgment, he shall proceed to sell under such execution so much of the attached property, real or personal, except as provided in subdivision 4 of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association, the sheriff shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto, which were had by such defendant.

3. If any of the attached property belonging to the defendant shall have passed out of the hands of the sheriff without having been sold or converted into money, such sheriff shall repossess himself of the same, and for that purpose shall have all the authority which he had to seize the same under the attachment and any person, who shall willfully conceal or withhold such property from the sheriff, shall be liable to double damages at the suit of the party injured.

4. Until the judgment against the defendant shall be paid, the sheriff may proceed to collect the notes and other evidences of debt that may have been seized or attached under the warrant of attachment, and to prosecute any bond he may have taken in the course of such proceedings and apply the proceeds thereof to the payment of the judgment. At the expiration of six months from the docketing of the judgment the court shall have power upon the petition of the plaintiff, accompanied by an affidavit setting forth fully all the proceedings, which have been had by the sheriff since the service of the attachment, the property attached and the disposition thereof, and also the affidavit of the sheriff that he has used diligence and endeavored to collect the evidences of debt in his hands so attached,

and that there remains uncollected of the same any part or portion thereof, to order the sheriff to sell the same upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant, the court shall make such order as to the service of notice and the time of service as shall be deemed just. When the judgment and all costs of the proceedings shall have been paid, the sheriff upon reasonable demand shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

§ 5379. Proceedings upon judgment for defendant. If the defendant recovers judgment against the plaintiff in the action, any undertaking given by the defendant, all the proceeds of sales and moneys collected by the sheriff and all property attached, remaining in his hands shall upon the order of the court be delivered by him to the defendant or his agent on request, and the warrant shall be discharged and the property released therefrom.

§ 5380. Cancellation of notices of attachment. At any time after the warrant of attachment has been vacated or annulled, or the attachment has been discharged, the court may, upon the application of any person aggrieved and with or without notice in the discretion of the court, direct that any notice filed for the purpose of attaching the property be canceled of record by the register of deeds of the county where it is filed or recorded. The cancellation must be made by the register of deeds, upon a certified copy of the order directing such cancellation being filed in his office, by an entry to that effect on the margin of the record referring to the order. Such cancellation may in like manner be made by the register of deeds upon a written request directing such cancellation, signed by the plaintiff or his attorney.

§ 217, C. Civ. P.
am'd.

§ 5381. Return by officer. When the warrant shall be fully executed or discharged the sheriff must return the same with his proceedings thereon to the court in which the action was commenced.

ARTICLE 5.—GARNISHMENT.

§ 1, c. 65, 1895.

§ 5382. Creditors may proceed by garnishment. Any creditor shall be entitled to proceed by garnishment in any court having jurisdiction of the subject of the action against any person, except a public corporation, who shall be indebted to or have any property whatever, real or personal, in his possession or under his control, belonging to such creditor's debtor, in the cases upon the conditions and in the manner prescribed in this chapter. The term plaintiff is used in this chapter to embrace every judgment creditor and the term defendant, a judgment debtor.

§ 2, c. 65, 1895.

§ 5383. Affidavit for garnishment. Either at the time of the issuing of a summons, or at any time thereafter before final judgment, in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuing in any case of an execution against property and before the time when it is returnable, the plaintiff, or some person in his behalf, may make an affidavit stating that he verily believes that some person, naming him, is indebted to, or has property, real or personal, in his possession or under his control, belonging to the defendant, or either

or any of the defendants in the action or execution, naming him, and that such defendant has not property in this state liable to execution sufficient to satisfy the plaintiff's demand, and that the indebtedness or property mentioned in such affidavit is, to the best of the knowledge and belief of the person making such affidavit, not by law exempt from seizure or sale upon execution. Any number of garnishees may be embraced in the same affidavit, but if a joint liability is claimed against any, it shall be so stated, and the garnishee named as jointly liable shall be deemed jointly proceeded against; otherwise the several garnishees shall be deemed severally proceeded against.

§ 5384. **Garnishee summons.** The plaintiff shall annex or subjoin to such affidavit a garnishee summons, which shall be substantially in the following form: § 3, c. 65, 1895.

State of North Dakota, }
County of..... } ss. Court.
A. B., plaintiff,
vs.
C. D., defendant, and
E. F., garnishee.

The state of North Dakota to the said garnishee:

You are hereby summoned pursuant to the annexed affidavit, as a garnishee of the defendant, C. D., and required within thirty days after the service of this summons upon you, exclusive of the day of service, to answer according to law, whether you are indebted to or have in your possession or under your control any property, real or personal, belonging to such defendant, and to serve a copy of your answer on the undersigned at..... in the county of.....; and in case of your failure so to do, you will be liable to further proceedings according to law; of which the said defendant will also take notice.

L. M., Plaintiff's Attorney.

P. O. address.....county, N. D.

§ 5385. **Service of summons and affidavit.** Such garnishee summons and affidavit may be served by the sheriff of the county, where any garnishee or defendant may be found, or by any other person not a party to the action. The service shall be made and the same returned with proof of the service to the person whose name is subscribed thereto with reasonable diligence. The person subscribing such garnishee summons may, at his option by an indorsement thereon, fix a time for the service thereof, and the service shall then be made accordingly. § 4, c. 65, 1895.

§ 5386. **To be served on garnishee and defendant.** The garnishee summons and annexed affidavit shall be served on each of the several garnishees named in the manner provided for service of a summons in an action; and, except when service of the summons in the action is made without the state or by publication, also on the defendant to the action in like manner, either before or within ten days after service on a garnishee. When the defendant shall have appeared in the action by an attorney such service may be made upon such attorney or upon the defendant. Unless the garnishee summons is so served on the defendant or his attorney in accordance with the provisions of this section, the service on the garnishee shall become void and of no effect from the beginning. § 5, c. 65, 1895.

§ 6, c. 65, 1895.

§ 5387. Subsequent garnishments. The plaintiff may in like manner subsequently proceed within the period limited against other garnishees, or against the same garnishees after they shall have once been discharged, upon a new affidavit, if he shall have reason to believe they have subsequently become liable; and he may summon garnishees resident in other counties than that in which the action is pending; but if an issue for trial shall be joined between the plaintiff and such garnishee, the court may on motion change the place of trial of such issue to the county of the garnishee's residence.

§ 7, c. 65, 1895.

§ 5388. Garnishment discharged if complaint not served. If the plaintiff shall not within ten days after demand for a copy of the complaint serve upon the garnishee or his attorney, except in case of garnishment upon execution, a copy of the complaint showing the amount of the indebtedness of the defendant in the action to the plaintiff, the proceeding against the garnishee shall be dismissed on motion of the garnishee with costs, unless the court or a judge shall in discretion and upon terms permit the same to stand.

§ 8, c. 65, 1895.

§ 5389. Affidavit denying liability. Within thirty days from the service of such garnishee summons the garnishee may, if the truth warrants, file with the clerk of the court in which the action is pending, and serve a copy thereof upon the plaintiff, his affidavit in the following form, substantially:

State of North Dakota, }
County of..... } ss. Court.

A. B., plaintiff,

vs.

C. D., defendant, and

E. F., garnishee.

E. F. being duly sworn, says that on the day of A. D. 18...., he was served with a garnishee summons in the above entitled action; that he was then and is now in no manner and upon no account whatever indebted or under liability to the defendant (naming him), and that he then had and now has in his possession or under his control, no real estate and no personal property, effects or credits of any description whatever, belonging to said defendant or in which he has any interest; and is in no manner liable as garnishee in this action.

.....
Subscribed and sworn to before me this day of A. D. 18

Thereby the proceeding against such garnishee shall be deemed discontinued, and the plaintiff shall pay the garnishee one dollar for his costs, unless within thirty days thereafter the plaintiff serves notice on such garnishee, that he elects to take issue on his answer to the garnishee summons and will maintain him to be liable as garnishee, in which case the issue shall stand for trial as a civil action, in which the affidavit on the part of the plaintiff shall be deemed the complaint, and the garnishee's affidavit the answer thereto.

§ 9, c. 65, 1895.

§ 5390. Affidavit when liability admitted. Question may be submitted to court. Unless the garnishee shall make the affidavit provided for in the preceding section, he shall within thirty days from the service of the garnishee summons file and serve in like manner an affidavit in which he shall state:

1. Whether he was at the time of service of the garnishee summons, or has since become indebted, or under any liability to the defendant named in the garnishee summons, in any manner upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability and all the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, he may set forth all the facts and circumstances concerning the same and submit the question to the court.

2. Whether he held at the time aforesaid, or now holds the title or possession of any real estate, or any interest in land of any description, or of any personal property, effects or credits, or any instruments or papers relating to such, belonging to the defendant or in which he is in any wise interested. And if he shall admit any such or be in any doubt respecting the same, he shall set forth the description of such property and all the facts and circumstances concerning the same, and the title, interest or claim of the defendant in or to the same.

3. If he shall claim any set-off or defense to any indebtedness or liability or any lien or claim to said property, he shall set forth the facts and circumstances thereof fully.

4. He may state any claim of exemption from execution on the part of the defendant, or other objection known to him against the right of the plaintiff to apply upon his demands the indebtedness or property disclosed.

5. If he shall disclose any indebtedness, or the possession of any property to which the defendant, and any other person as well, make claim, he may set forth the names and residences of such other claimants and so far as known the nature of their claims.

§ 5391. When judgment may be rendered against garnishee. If any garnishee, having been duly summoned, shall fail to serve his affidavit as required in the preceding section, the court may render judgment against him for the amount of the judgment which the plaintiff shall recover against the defendant in the action for damages and costs, together with the costs of such garnishee action. Such garnishee may also be proceeded against as for a contempt according to the provisions of chapter 34 of this code. § 10, c. 65, 1895.

§ 5392. Indebtedness paid to officer. Officer may levy. § 11, c. 65, 1895.
In case the answer of the garnishee shall show indebtedness to the defendant, he may pay the amount thereof less three dollars for his costs to the officer having a warrant of attachment in the action, if any, or otherwise to the clerk of the court; or, if the garnishment is in aid of an execution, to the sheriff having the execution; and the officer to whom such payment is made shall give him a receipt specifying the facts and such receipt shall be a complete discharge of all liability to any party for the amount so paid. If the answer discloses any money, credits or other property, real or personal, in the possession or under the control of the garnishee, the officer having a writ of attachment or an execution, if any, may levy upon the interest of the defendant in the same; otherwise the garnishee shall hold the same until the order of the court thereon.

§ 5393. Answer conclusive unless traversed. The answer § 12, c. 65, 1895.
of the garnishee shall in all cases be conclusive of the truth of the facts therein stated, unless the plaintiff shall within thirty days serve

upon the garnishee a notice in writing, that he elects to take issue on his answer; in which case the issue shall stand for trial as a civil action, in which the affidavit on the part of the plaintiff shall be deemed a complaint and the garnishee's affidavit the answer thereto. The plaintiff may in all cases move the court upon the answer of the garnishee and of the defendant, if he shall also answer, for such judgment as he shall be entitled to thereon, but any such judgment shall be no bar beyond the facts stated in such answers.

§ 13, c. 65, 1895.

§ 5394. Answer of corporation. The answer of a corporation summoned as a garnishee may be made by any officer thereof; and of any other garnishee, by any agent or attorney in his behalf, who shall be acquainted with the facts.

§ 14, c. 65, 1895.

§ 5395. Defendant may defend garnishee proceedings. The defendant may in all cases by answer duly verified, to be served within thirty days from the service of the garnishee summons on him, defend the proceeding against any garnishee upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant or for any other reason is not liable to garnishment; or, upon any ground upon which a garnishee might defend the same; and may participate in the trial of any issue between the plaintiff and garnishee for the protection of his interests. And the garnishee may at his option defend the principal action for the defendant, if the latter does not, but shall be under no obligations so to do.

§ 15, c. 65, 1895.

§ 5396. Proceedings deemed an action. The proceedings against a garnishee shall be deemed an action by the plaintiff against the garnishee and defendant as parties defendant, and all provisions of law relating to proceedings in civil actions at issue, including examination of the parties, amendments and relief from default or proceedings taken and appeals and all provisions for enforcing judgments, shall be applicable thereto; but when the garnishment is not in aid of an execution, no trial shall be had of the garnishee action, until the plaintiff shall have judgment in the principal action, but the garnishment action may be noticed for trial at the same term if issue therein is joined in time; and if the defendant has judgment, the garnishee action shall be dismissed with costs. The court shall render such judgment in all cases as shall be just to all the parties, and properly protect their respective interests, and may adjudge the recovery of an indebtedness, the conveyance, transfer or delivery to the sheriff, or any officer appointed by the judgment, of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand, or by the judgment pass the title thereto; and may therein or by its order, when proper, direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid over or delivered to the clerk or officer. The judgment against a garnishee shall acquit and discharge him from all demands by the defendant, or his representative, for all money, goods, effects or credits paid, delivered or accounted for by the garnishee by force of such judgment.

§ 16, c. 65, 1895.

§ 5397. Interpleader when had. When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the court may on motion order that such claimant be interpleaded as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order,

in such form as the court shall direct, be served upon him, and that after such service shall have been made, the garnishee may pay or deliver to the officer or the clerk such indebtedness or property, and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount so paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action, and may be made without the state or by publication thereof, if the order shall so direct. Upon such service being made such claimant shall be deemed a defendant to the garnishee action and within thirty days shall answer, setting forth his claim, or any defense which the garnishee might have made. In case of default, judgment may be rendered which shall conclude any claim upon the part of such defendant.

§ 5398. Liability of garnishee. From the time of the service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, money, credits and effects in his possession or under his control belonging to the defendant, or in which he shall be interested, to the extent of his right or interest therein, and of all debts due or to become due to the defendant, except such as may be by law exempt from execution. Any property, moneys, credits and effects held by a conveyance or title void as to the creditors of the defendant shall be embraced in such liability. § 17, c. 65, 1895.

§ 5399. When judgment not rendered. No judgment shall be rendered upon a liability of the garnishee arising either: § 18, c. 65, 1895.

1. By reason of his having drawn, accepted, made, indorsed or guaranteed any negotiable bill, draft, note or other security.

2. By reason of any money or other thing received or collected by him as sheriff, or other officer, by force of an execution or other legal process in favor of the defendant.

3. By reason of any money in his hands as a public officer and for which he is accountable to the defendant merely as such officer.

4. By reason of any money or other thing owing from him to the defendant, unless before judgment against the defendant, it shall have become due absolutely and without depending on any future contingency; but judgment may be given for any money or other thing owing after it shall have become due absolutely and without depending on any contingency.

§ 5400. Defendant not to sue garnishee until, etc. No action shall be commenced by the defendant or his assignee against a garnishee upon any claim or demand liable to garnishment, or to recover any property garnished, or execution be issued upon a judgment in favor of the defendant against such garnishee subsequent to the service of the garnishee summons upon him, until the termination of the garnishee action; and, if an action shall have been commenced or an execution issued, it shall be stayed by the court or a judge thereof upon the garnishee's application, except that upon cause shown, the court or judge may by order permit the commencement of such an action, or the issue of an execution, or the further prosecution of one stayed. § 19, c. 65, 1895.

§ 5401. Defendant may release garnishment and how. The defendant may, at any time after the complaint is filed and before judgment, file with the clerk of the court an undertaking executed by at least two sureties, resident freeholders of the state, to the effect that they will on demand pay to the plaintiff the amount of the judgment with all costs that may be recovered against such defendant in § 20, c. 65, 1895.

the action, not exceeding a sum specified, which sum shall not be less than double the amount demanded by the complaint, or in such less sum as the court shall upon application direct. The sureties shall justify their responsibility by affidavit annexed, stating a sum which each is worth in property within this state over and above all debts and liabilities and property exempt from execution, the aggregate of which sums shall be double the amount specified in the undertaking. The defendant shall serve on the plaintiff a copy of such undertaking with a notice where and when the same was filed. Within three days after the receipt thereof the plaintiff shall give notice to the defendant that he excepts to the sufficiency of the sureties, or he shall be deemed to have waived all objections to them. When the plaintiff excepts, the sureties shall justify in like manner as bail upon an arrest. Thereafter all the garnishees shall be discharged and the garnishment proceedings shall be deemed discontinued, and any money or property paid or delivered to any officer shall be surrendered to the person entitled thereto and the costs shall be taxable as disbursements of the plaintiff in the action, if he recovers.

§ 21, c. 65, 1895.

§ 5402. Costs in garnishee actions. In case of the trial of an issue between the plaintiff and any garnishee costs shall be awarded to the plaintiff and against the garnishee in addition to his liability, if the plaintiff recovers more than the garnishee admitted by his answer; and if he does not, the garnishee shall recover costs of the plaintiff. In all other cases under this article not expressly provided for, the court may award costs in favor of or against any party in its discretion. When there is no issue for trial and any liability on the part of the garnishee is disclosed, the costs of the garnishment proceeding shall be taxed for the plaintiff, if he recovers, as disbursements in the principal action.

ARTICLE 6. — RECEIVERS.

§ 219, C. Civ. P.
am'd.

§ 5403. Cases when appointed. A receiver may be appointed by the court in which an action is pending, or by a judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund or the proceeds thereof is probable, and when it is shown that the property or fund is in danger of being lost, removed or materially injured.
2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property when it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the conditions of the mortgage have not been performed and that the property is probably insufficient to discharge the mortgage debt.
3. After judgment, to carry the judgment into effect.
4. After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied or when the judgment debtor refuses to apply his property in satisfaction of the judgment.
5. In the cases provided in this code, when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has

forfeited its corporate rights; and in like cases within this state, of foreign corporations.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 5404. Who may be receiver. Undertaking by applicant. No party or person interested in an action can be appointed receiver therein without the written consent of the party filed with the clerk. If a receiver is appointed upon an *ex parte* application, the court before making the order may require from the applicant an undertaking with sufficient sureties in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously or without sufficient cause; and the court may in its discretion at any time after said appointment require an additional undertaking. § 221, C. Civ. P.

§ 5405. Qualification of receiver. Before entering upon his duties the receiver must be sworn to perform them faithfully, and with one or more sureties approved by the court or judge execute an undertaking to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein. § 222, C. Civ. P.

§ 5406. Powers. The receiver has, under the control of the court, power to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers and generally to do such acts respecting the property as the court may authorize. § 223, C. Civ. P.

§ 5407. Investment of funds on consent. Funds in the hands of a receiver may be invested upon interest by order of the court; but no such order can be made except upon the consent of all the parties to the action. § 224, C. Civ. P.

ARTICLE 7. — OF DEPOSIT.

§ 5408. What subject to order of deposit. When it is admitted by the pleadings or the examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party with or without security, subject to the further direction of the court. § 225, C. Civ. P.

§ 5409. Voluntary deposit in court of property adversely claimed. Whenever two or more persons make claim for the whole or any part of the same money, personal property or effects in the possession or control of any other person as bailee or otherwise and the right of any such claimant is adverse to the right of any other claimant, or is disputed or doubtful, and the bailee, custodian or person in control of any part of such property, money or effects is unable to determine to whom the same rightfully belongs, or who is rightfully entitled to the possession thereof; or whenever such bailee, custodian or person in control has notice or knowledge of any right or claim of right of any person in or to any part of such property, money or effects adverse to the right of any other claimant therefor; or § 1, c. 39, 1895.

whenever any debt, money, property or effects owing by or in the possession or under the control of any person may be attached by garnishment or other process, and there is any dispute as to who is entitled to the same or any part thereof; in any such case the person in the possession or control of any such property, money or effects, when an action in any form has been commenced for an account of or growing out of the same or in which the same has been attached as aforesaid, may pay such money or deliver such property or effects to the clerk of the court in which any such action having reference to said money, property or effects, or the value thereof, may be pending, or out of which any garnishment or other process may issue with reference thereto; or if no such suit is commenced, he may apply to the district court of the district where such property, money or effects may be situated, and upon showing to the satisfaction of the court the existence of facts bringing him within the operation of this section, said court shall make an order designating a depository with whom said property, money or effects may be deposited by the applicant for such order. In either case such person in the possession or control of such property, money or effects shall at once notify personally or by registered mail all persons of whose claims he may have notice or knowledge, having or claiming any interest, property, lien or right in, to or upon such property, money or effects, of such deposit; and upon giving such notice the person so depositing the same shall thereupon be relieved from further liability to any person on account of such property, money or effects: provided, that such depositor may be required upon the application of any party interested therein to appear and make disclosure before the court, in which any such action may be pending or by which any order designating a depositor may be made, concerning the said property, money, debts or effects held, controlled or owed by him. If the address of any persons having or making any claim as aforesaid cannot be ascertained, an affidavit to that effect shall be filed with the depository, and the giving of such notice shall not be required in such case.

§ 226, C. Civ. P.

§ 5410. Disobedience. Contempt. Whenever in the exercise of its authority a court shall have ordered the deposit, delivery or conveyance of money or other property and the order is disobeyed, the court besides punishing the disobedience as for contempt may make an order requiring the sheriff to take the money or property and deposit, deliver or convey it in conformity with the direction of the court.

§ 227, C. Civ. P.

§ 5411. Defendant's admissions. When the answer of the defendant expressly or by not denying admits part of the plaintiff's claim to be just, the court on motion may order such defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or a provisional remedy.

CHAPTER 10.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

ARTICLE 1. — JUDGMENT UPON FAILURE TO ANSWER, ETC.

§ 5412. **Judgment defined.** A judgment is the final determination of the rights of the parties in the action. § 228, C. Civ. P.

§ 5413. **On failure to answer. Counterclaim. Relief. Publication. Restitution.** Judgment may be had if the defendant fails to answer the complaint in the following cases: § 229, C. Civ. P. *am'd.*

1. In an action arising on contract for the recovery of money only the plaintiff may file with the clerk proof of personal service of the summons and complaint on one or more of the defendants, or of the summons according to the provisions of section 5249 and that no answer or demurrer has been received. Judgment shall thereupon be entered for the amount demanded in the complaint against the defendant or defendants, or against one or more of the several defendants in the cases provided for in section 5261; but if the complaint is not sworn to and such action is on an instrument for the payment of money only, the court on its production shall assess the amount due to the plaintiff thereon, and in other cases shall ascertain the amount which the plaintiff is entitled to recover in such action from his examination under oath or other proof and enter the judgment for the amount so assessed or ascertained. In case the defendant gives notice of appearance in the action, he shall be entitled to five days' notice of the time and place of such assessment. When the defendant by his answer in any such action shall not deny the plaintiff's claim, but shall set up a counterclaim amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of such claim over the said counterclaim in like manner in any such action upon the plaintiff's filing with the clerk of the court a statement admitting such counterclaim, which statement shall be annexed to and be a part of the judgment roll.

2. In other actions the plaintiff may upon the like proof apply to the court after the expiration of the time for answering for the relief demanded in the complaint. If the taking of an account, or the proof of any fact is necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may in its discretion order a reference for that purpose. And when the action is for the recovery of money only, or of specific real or personal property with damages for the withholding thereof, the court may order the damages to be assessed by a jury or, if the examination of a long account is involved, by a reference as above provided. If the defendant gives notice of appearance in the action before the expiration of the time for answering, he shall be entitled to eight days' notice of the time and place of application to the court for the relief demanded by the complaint.

3. In actions when the service of the summons was by publication, the plaintiff may in like manner apply for judgment, and the court must thereupon require proof to be made of the demand mentioned in the complaint; and if defendant is not a resident of the state, must require the plaintiff or his agent to be examined on oath

respecting any payments that have been made to the plaintiff or to any one for his use on account of such demand and may render judgment for the amount which he is entitled to recover. Before rendering judgment the court may in its discretion require the plaintiff to cause to be filed satisfactory security, to abide the order of the court, touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under or by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action and shall succeed in such defense.

§ 5414. **On frivolous pleading.** If a demurrer, answer or reply is frivolous, the party prejudiced thereby upon a previous notice of five days may apply to a judge of the court either in or out of the court for judgment thereon, and judgment may be given accordingly.

ARTICLE 2.—ISSUES AND MODE OF TRIAL.

§ 231, C. Civ. P. § 5415. **Origin and classes of issues.** Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party, and controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

§ 232, C. Civ. P. § 5416. **Issues of law.** An issue of law arises upon a demurrer to the complaint, answer or reply, or to some part thereof.

§ 233, C. Civ. P. am'd. § 5417. **Of fact classified.** An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; or,
2. Upon new matter in the answer not requiring a reply, or controverted by a reply; or,
3. Upon new matter in the reply, unless an issue of law is joined thereon.

§ 234, C. Civ. P. § 5418. **Both. Order of trial.** Issues both of law and fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law must be first tried, unless the court otherwise directs.

§ 235, C. Civ. P. § 5419. **Trial defined.** A trial is the judicial examination of the issues between the parties, whether they are issues of law or of fact.

§ 236, C. Civ. P. § 1, c. 146, 1885, am'd. § 5420. **By whom triable.** An issue of law must be tried by the court or by the judge. An issue of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial is waived as provided in section 5449, or a reference is ordered as provided in sections 5455 and 5456. Every other issue is triable by the court, which, however, may order the whole issue or any specific question of fact involved therein to be tried by a jury or by a referee as provided in sections 5455 and 5456.

§ 237, C. Civ. P. § 1, c. 147, 1885. § 5421. **Issues of fact, how tried.** All issues of fact triable by a jury or by the court must be tried before a single judge. Issues of fact must be tried at a regular term of the district court, when the trial is by jury, otherwise at a regular or special term as the court may by its rules prescribe. Issues of law must be tried at a regular or special term of the district court, or by the court in vacation, or judge at chambers. If by the court in vacation, or judge at chambers

the same may be heard, tried and determined in any county of the district within which the action is brought, and judgment thereon entered in the proper county upon the giving by either or any party of the notice prescribed by section 5422; but in such case no note of issue need be filed, and any judgment, final decision or actual determination made upon such trial and hearing may be appealed from in the same manner and subject to the same rules and provisions as in cases of other appeals from actual determinations and final decisions of any regular or special terms of the district courts of this state.

§ 5422. Note of issue. Contents. Order of trials. At any time after issue and at least ten days before the court either party may give notice of trial. The party giving the notice shall furnish the clerk at least eight days before the court with a note of the issue, containing the title of the action, the names of the attorneys and the time when the last pleading was served, and the clerk shall thereupon enter the cause upon the calendar according to the date of the issue. There need be but one notice of trial and one note of issue from either party, and the action must then remain on the calendar until disposed of and when called may be brought to trial by the party giving the notice. The issues on the calendar shall be disposed of in the following order, unless for the convenience of parties or the dispatch of business, the court shall otherwise direct: § 238, C. Civ. P.

1. Issues of fact to be tried by a jury.
2. Issues of fact to be tried by the court.
3. Issues of law.

§ 5423. Either party proceeds. Separate trials. Either party, when the case is reached upon the calendar and in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the complaint, or a verdict or judgment as the case may require. A separate trial between a plaintiff and any of the several defendants may be allowed by the court, whenever in its opinion justice will be promoted. § 239, C. Civ. P.

§ 5424. Who to furnish papers. When the issue shall be brought to trial by the plaintiff, he shall furnish the court with a copy of the summons and pleadings with the offer of the defendant, if any shall have been made. When the issue shall be brought to trial by the defendant, and the plaintiff shall neglect or refuse to furnish the court with a copy of the summons and pleadings and the offer of the defendant, the same may be furnished by the defendant. § 240, C. Civ. P.

ARTICLE 3. — FORMATION OF THE TRIAL JURY.

§ 5425. Jury ballots. At the opening of the court the clerk must prepare separate ballots containing the names of the persons returned as jurors, which must be folded as nearly alike as possible and so that the names cannot be seen, and must deposit them in the trial jury box. § 241, C. Civ. P.

§ 5426. Clerk to draw jury. When the action is called for trial by jury, the clerk must draw from the trial jury box of the court the ballots containing the names of the jurors summoned, until the jury is completed or the ballots are exhausted. § 242, C. Civ. P.

§ 5427. Challenges classed. By whom. Either party may challenge the jurors, but when there are several parties on either side, they must join in a challenge before it can be made. The challenges § 243, C. Civ. P.

are to individual jurors, and are either peremptory or for cause. Each party is entitled to three peremptory challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately commencing with the plaintiff.

§ 244. C. CIV. P.

§ 5428. Challenges for cause. Grounds of. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by the political code to render a person competent as a juror.

2. Consanguinity or affinity within the fourth degree to either party.

3. Standing in the relation of guardian and ward, master and servant, employer and clerk or principal and agent to either party, or being a member of the family of either party, or being a partner in business with either party, or surety on any bond or obligation for either party.

4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action.

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation.

6. Having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or some of them.

7. The existence of a state of mind in the juror evincing enmity against or bias to or against either party.

8. That he does not understand the English language as used in the courts.

§ 245. C. CIV. P.

§ 5429. Trial of same. Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

§ 246. C. CIV. P.

§ 5430. Oath to jurors. As soon as the jury is completed the following oath must be administered to the jurors:

"You, and each of you, do solemnly swear, that you will well and truly try the matters in issue between, the plaintiff, and, the defendant, and a true verdict render according to the evidence. So help you God."

If any person is conscientiously scrupulous of taking an oath, he shall be allowed to make affirmation, substituting for the words, "so help you God," at the end of the oath the following: "This you do affirm under the pains and penalties of perjury."

ARTICLE 4. — OF THE CONDUCT OF THE TRIAL.

§ 247. C. CIV. P.

§ 5431. Order of trial. When the jury has been sworn, the trial must proceed in the following order, unless the judge for special reasons otherwise directs:

1. The plaintiff after stating the issue and his case must produce the evidence on his part.

2. The defendant may then open his defense and offer his evidence in support thereof.

3. The parties may then respectively offer rebutting evidence only, unless the court for good reasons in furtherance of justice permits them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the plaintiff must commence and may conclude the argument.

5. If several defendants having separate defenses appear by different counsel, the court must determine their relative order in the evidence and argument.

6. The court may then charge the jury.

§ 5432. Charge wholly written. Giving and refusing.

The court in charging a jury shall only instruct as to the law of the case; and no court shall instruct the jury in any civil case, unless such instructions are first reduced to writing. Either party may request instructions to the jury. Each instruction so requested must be written on a separate sheet and may be given or refused by the court, and the court shall write on the margin of such requested instruction given by him the word, "given," and on the margin of those which he does not give he shall write the word, "refused," and all instructions asked for by the counsel shall be given or refused by the court without modification or change, unless modified or changed by consent of counsel asking the same. The court may in its discretion submit the written instructions, which it proposes to give to the jury, to counsel in the case for examination, and require such counsel after a reasonable examination thereof to designate such parts thereof as he may deem objectionable, and such counsel must thereupon designate such parts of such instructions as he may deem improper, and thereafter only such parts so designated shall be excepted to by the counsel so designating the same.

§ 248, C. Civ. P.
§ 1, c. 84, 1893.
am'd.

§ 5433. Taken by jury. Exceptions.

All instructions given to the jury must be read to them by the court without disclosing to them whether such instructions were requested or not and must be signed by the judge and delivered to the jury and shall be taken by the jury in their retirement and returned with their verdict into court, and upon the close of the trial all instructions given or refused must be filed with the clerk and either party may within twenty days from the date of such filing file with the clerk exceptions to any of such instructions or refusals to instruct and the same shall thereupon be deemed duly excepted to; provided, that with the consent of both parties entered in the minutes the court may instruct the jury orally, in which case such oral instructions shall be taken down by the official stenographer and written out at length and the shorthand notes thereof together with such instructions so written out shall be filed in the case with the clerk, and either party may except to any of such instructions within twenty days after the date of such filing as hereinbefore provided: provided, that the official stenographer shall receive for writing out such instructions the same fees as for making transcripts; and provided, further, that when oral instructions are given, the jury shall not take the charge in their retirement, unless so ordered by the court.

§ 249, C. Civ. P.
§ 1, c. 84, 1893.

§ 5434. View by jury.

When in the opinion of the court it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

§ 250, C. Civ. P.

§ 5435. Admonitions to jury.

If the jury are permitted to separate either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to con-

§ 251, C. Civ. P.

verse with or suffer themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

§ 232, C. Civ. P.

§ 5436. What papers jury may take. Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause except depositions or copies of such papers as ought not in the opinion of the court to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them, but none taken by any other person.

§ 233, C. Civ. P.

§ 5437. Conduct of jury in retirement. When the case is finally submitted to the jury they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself except to ask them if they have agreed upon a verdict; and he must not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.

§ 254, C. Civ. P.

§ 5438. Disagreement. Information as to law. After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony or if they desire to be informed of any point of law arising in the case, they may require the officer to conduct them into court. Upon their being brought into court the information required must be given in the presence of or after notice to the parties or counsel.

§ 255, C. Civ. P.

§ 5439. Sick juror discharged. If after the impaneling of a jury and before a verdict, a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or another juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterwards impaneled.

§ 256, C. Civ. P.

§ 5440. Verdict prevented. New trial. In all cases when the jury are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial or after the cause is submitted to them, the action may be again tried immediately or at a future time as the court may direct.

§ 257, C. Civ. P.

§ 5441. Sealed verdict. Adjournment. While the jury are absent, the court may adjourn from time to time in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term discharges the jury.

§ 258, C. Civ. P.

§ 5442. How verdict received. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing signed by the foreman, and must be read by the clerk to the jury and the inquiry made whether it is their verdict. If any juror disagrees, they must be sent out again; but if no disagreement is expressed and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case.

Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out.

§ 5443. Correcting verdict. When the verdict is announced, if it is informal or insufficient in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out. § 259, C. Civ. P.

ARTICLE 5. — OF THE VERDICT.

§ 5444. General and special verdict defined. The verdict of a jury is either general or special. § 260, C. Civ. P.

1. A general verdict is that by which they pronounce generally upon all or any of the issues either in favor of the plaintiff or defendant; and,

2. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

The special verdict must present the conclusions of fact as established by the evidence and not the evidence to prove them; and these conclusions of fact must be so presented that nothing shall remain to the court but to draw from them conclusions of law.

§ 5445. When special verdict directed. How prepared. When either party at or before the close of the testimony and before any argument to the jury is made or waived shall so request, shall direct the jury to find a special verdict. Such verdict shall be prepared by the court in the form of questions in writing, which shall be confined to matters involving the merits of the case and shall admit of direct answer and the jury shall make their answer thereto in writing. The court may also direct the jury, if they render a general verdict, to find in writing upon any particular questions of fact, to be stated as aforesaid. In every action for the recovery of money only, or of specific real property, the jury may in their discretion, when not otherwise directed by the court, render a general or a special verdict. The special verdict or finding must be filed with the clerk and entered upon the minutes. When the special findings of fact are inconsistent with the general verdict, the former controls the latter and the court must give judgment accordingly. § 261, C. Civ. P. am'd.

§ 5446. Jury to find amount. Assessment when judgment rendered on pleadings. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counterclaim for the recovery of money is established exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery; and they may also under the direction of the court assess the amount of the recovery when the court gives judgment on the pleadings for either party. § 262, C. Civ. P. am'd.

§ 5447. Specific personal property. Jury find value and damages. In an action for the recovery of specific personal property the jury must find by their verdict the facts as the case may be as follows: § 263, C. Civ. P. am'd.

1. In case they find against the defendant and the property has not been delivered to the plaintiff, they must find the value of the property, or of the plaintiff's interest therein, if less than its full value, at the time of the taking, and that the plaintiff is entitled to a

delivery of the property, and they must also assess the damages, if any are claimed in the complaint, which the plaintiff has sustained by reason of the taking and detention of such property; or,

2. In case they find against the defendant and the property has been delivered to the plaintiff, they must find that the plaintiff is entitled to the property and they must also assess the damages, if any are claimed in the complaint, which the plaintiff has sustained by reason of the taking and detention of such property.

3. In case they find against the plaintiff and the property has been delivered to him, and the defendant in his answer claims a return of the property, they must find the value thereof, or of the defendant's interest therein, if less than its full value, at the time of the taking, and they must also assess the damages, if any are claimed in the answer, which the defendant has sustained by reason of the taking and detention of such property; or,

4. In case they find against the plaintiff and the property has been retained by the defendant, they must find that the defendant is entitled to such property.

5. In case the jury find that each party is entitled to specific portions of the property in controversy and such portion has been delivered to the opposite party and a return is claimed in the complaint or answer, they must find the value of such portion, or of the party's interest therein, if less than its full value, at the time of the taking, and also assess the damages, if any are claimed in the complaint or answer, in favor of the plaintiff or defendant as hereinbefore provided as to the portion to which they find the plaintiff or defendant entitled.

Whenever the jury are so instructed, they must find the value of specific portions of the property in controversy or of the interest of either party therein, if less than its full value, at the time of the taking, and shall also assess the damages, if any are claimed by the party in whose favor they find sustained by reason of the taking and detention of such property.

§ 264, C. Civ. P.

§ 5448. Verdict and entries. Upon receiving a verdict an entry must be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses and setting out the verdict at length; and when a special verdict is found, either the judgment rendered thereon or, if the case is reserved for argument or further consideration, the order thus reserving it.

ARTICLE 6. — OF THE TRIAL BY THE COURT.

§ 265, C. Civ. P.

§ 5449. How jury waived. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or for the recovery of specific real or personal property with or without damages, and with the assent of the court in other actions in the manner following:

1. By failing to appear at the trial.
2. By written consent in person or by attorney filed with the clerk.
3. By oral consent in open court entered in the minutes.

§ 266, C. Civ. P.
1. c. 25, 1887.
1. c. 89, 1893.

§ 5450. Decision compulsory within thirty days. All motions or applications in any action, special proceeding or other matter in the district court must be decided and such decision be reduced to writing and filed with the clerk within thirty days after the same shall have been submitted to the court for decision, unless

prevented by the sickness of the judge whose duty it is to decide the same or by other unavoidable casualty, and upon the trial of any question or issue of fact by the court its decision thereon and conclusions of law upon such decision, and direction for entry of judgment in accordance with such conclusions must be given in writing and filed with the clerk within sixty days after the cause has been submitted for decision, unless such decision is prevented for the reason hereinbefore stated, and judgment shall be entered by the clerk in accordance with such direction upon the application of the party entitled thereto and the filing of such decision and conclusions of law. Each judge of the district court shall not less than five nor more than fifteen days before each quarterly installment of his salary becomes due file in the office of the auditor of the state a certificate under his hand stating in effect that no motion, application or question or issue of fact submitted to him remains undecided contrary to the provisions of this section. And in case any such decision has been prevented by any of the causes enumerated in this section, such certificates shall state the facts constituting the cause of such prevention, and the state auditor is hereby directed not to sign or issue any warrant for the payment of any quarterly installment of salary to any judge of the district court until after such judge shall have filed such certificate as herein provided.

§ 5451. Facts and conclusions separately stated. In giving the decision the facts found and the conclusions must be separately stated. Judgment upon the decision must be entered accordingly. § 267, C. Civ. P.

§ 5452. How findings waived. Findings of fact may be waived by the several parties to an issue of fact: § 268, C. Civ. P.
§ 2, c. 25, 1887.

1. By failing to appear at the trial.
2. By consent in writing filed with the clerk.

§ 5453. Preparation of findings by parties. At the time the cause is submitted the judge may direct either or both parties to prepare findings of facts, unless they have been waived, and when so directed the party must within two days prepare and serve upon his adversary and submit to the judge such findings, and may within two days thereafter briefly suggest in writing to the judge why he desires findings upon the points included within the findings prepared by himself, or why he objects to findings upon the points included within the findings prepared by his adversary. The judge may adopt, modify or reject the findings so submitted. If at the time of the submission of the cause the judge does not direct the preparation of findings, or those prepared are rejected, then he must himself prepare the findings. § 269, C. Civ. P.

§ 5454. Making up judgment. On a judgment for the plaintiff upon an issue of law he may proceed in the manner prescribed by the first two subdivisions of section 5413 upon the failure of the defendant to answer. If judgment is for the defendant upon an issue of law and the taking of an account or proof of any fact is necessary to enable the court to complete the judgment, a reference may be ordered as in that section provided. § 270, C. Civ. P.

ARTICLE 7. — OF REFERENCES AND TRIALS BY REFEREES.

§ 5455. Reference by consent. Fees of referee. All or any of the issues in an action whether of fact or law or both may be § 271, C. Civ. P.
§ 1, c. 112, 1889,
am'd.

referred by the court or judge thereof upon the written consent of the parties. The fees of referees shall be fixed by the court and shall in no case exceed ten dollars per day except upon the written consent of both parties to the reference.

§ 272, C. Civ. P.
2, c. 112, 1889.

§ 5456. Reference without consent. When the parties do not consent to the reference the court may upon the application of either party or of its own motion direct a reference in the following cases:

1. When the trial of an issue of fact will require the examination of a long account on either side, in which case the referee may be directed to hear and decide the whole issue or to report upon any specific question of fact therein; or,

2. When the taking of an account is necessary for the information of the court before judgment or for carrying a judgment or order into effect; or,

3. When a question of fact other than upon the pleadings shall arise upon motion or otherwise in any stage of the action.

§ 273, C. Civ. P.

§ 5457. To whom reference ordered. A reference may be ordered to any person or persons not exceeding three agreed upon by the parties. If the parties do not agree, the court or judge must appoint one or more referees not exceeding three, who reside in the county or subdivision in which the action or proceeding is triable and against whom there is no legal objection.

§ 274, C. Civ. P.

§ 5458. Objections to referee. Grounds of. Either party may object to the appointment of any person as referee for the same cause for which challenges for cause may be taken to a petit juror in the trial of a civil action.

§ 275, C. Civ. P.

§ 5459. Heard by court. The objections taken to the appointment of any person as referee must be heard and disposed of by the court or judge thereof. Affidavits may be read and witnesses examined as to such objections.

§ 276, C. Civ. P.
3, c. 112, 1889.
am'd.

§ 5460. How trial conducted. The trial by referee shall be conducted in the same manner as a trial by the court. Upon such trial the referee shall have the same power to grant adjournments and allow amendments to any pleading as the court would have and upon the same terms and with like effect. He shall also have the same power to preserve order and punish all violations thereof upon such trial and compel the attendance of witnesses before him and to punish them as for a contempt for nonattendance or refusal to be sworn or testify as is possessed by the court. He shall give to the parties or their attorneys at least eight days' notice of the time and place of trial. He must state the facts found and conclusions of law separately and report his findings together with all of the evidence taken by him and all exceptions taken on the hearing to the district court and the district court may review such report and on motion enter judgment thereon, or set aside, alter or modify the same and enter judgment upon the same so altered or modified, and may require the referee to amend his report when necessary. The judgment so entered by the district court may be appealed from to the supreme court in like manner as from judgments in other cases.

§ 278, C. Civ. P.

§ 5461. Oath of referees. The referees before proceeding to hear any testimony must be sworn well and truly to hear and determine the facts referred to them and true findings render according to the evidence, and they have power to administer oaths to all witnesses produced before them.

ARTICLE 8. — EXCEPTIONS.

§ 5462. **Exception defined.** An exception is an objection upon a matter of law to a decision made either before or after judgment by a court or judge in an action or proceeding. The exception must be taken at the time the decision is made except as provided in section 5463. § 1. c. 21, 1887.

§ 5463. **What deemed excepted to.** The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision finally determining the rights of the parties, or some of them, an order granting or refusing a new trial, an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance, an order made upon ex parte application and an order or decision made in the absence of a party are deemed to have been excepted to and the same may be reviewed both as to questions of law and the sufficiency of the evidence upon motion for a new trial or upon appeal as fully as if exception thereto had been expressly taken. § 2. c. 21, 1887. am'd.

§ 5464. **Statement of the case defined.** A statement of the evidence or a part thereof settled by the court for the purpose of reviewing either errors of law or the sufficiency of the evidence or both is designated in this code a statement of the case.

§ 5465. **Exceptions settled at time or after.** A statement containing exceptions to any ruling may be presented to the judge for settlement at the time the ruling is made, or the exception may be entered on the judge's minutes and afterwards settled. Such statement must be conformable to the truth or be at the time corrected until it is so and signed by the judge and filed with the clerk. § 4. c. 21, 1887. am'd.

§ 5466. **Exceptions on trial by referee. Service of findings and conclusions.** In any trial by a referee either party may take exceptions in the same manner as on trials by the court and the referee shall note in his minutes any exceptions so taken as they are taken. The prevailing party shall serve upon the other a copy of the referee's findings of fact and conclusions of law after the same shall have been filed with a notice of the time and place of such filing, and either party may except to any finding of fact or conclusion of law by a referee by filing written exceptions with the clerk at any time before the expiration of twenty days after service of such copy and notice. All such exceptions may be incorporated with the statement of the case which may be thereafter settled. When the referee's findings of fact or conclusions of law are set aside or modified by the court, no exceptions shall be necessary to enable a full review of such orders upon appeal.

§ 5467. **Preparation and settlement of statement of the case.** When a party desires to have a statement of the case settled, he may within thirty days after receiving notice of the entry of judgment or such further time as the court may allow prepare the draft of a statement and serve the same upon the adverse party. Such draft must contain all the exceptions upon which the party relies, but no particular form of exception is required. The objection must be stated with so much of the evidence or other matter as is necessary to explain it and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or proceed- § 4. c. 21, 1887. am'd.

ing may be copied or the substance thereof stated. There shall be incorporated in every such statement a specification of the particulars in which the evidence is alleged to be insufficient to justify the verdict or other decision and of the errors of law upon which the party settling the same intends to rely. If no such specification is made the statement shall be disregarded on motion for a new trial and on appeal. Within twenty days after the service of the draft of a statement the adverse party may propose amendments to the same and serve such amendments upon the other party. The proposed statement and amendments must within twenty days thereafter be presented by the party seeking the settlement thereof to the judge who tried or heard the case upon five days' notice to the adverse party. At the time designated the judge must settle the statement. If no amendments are served, or if served, are allowed, the proposed statement may be presented with the amendments, if any, to the judge for settlement without notice to the adverse party. If the judge is absent from the district at the time when the proposed statement should be presented to him for settlement, the time of such absence shall not be deemed any portion of the time herein limited for the settlement thereof. It is the duty of the judge in settling the statement to strike out of it all redundant and useless matter and to make the statement truly represent the case, notwithstanding the assent of the parties to such matter. When settled the statement must be signed by the judge with his certificate to the effect that the same is allowed and shall then be filed with the clerk.

§ 282, C. Civ. P.
am'd.

§ 5468. Exceptions after judgment. Exceptions to any decision made after judgment may be presented to the judge at the time of such decision and may be settled or noted as provided in section 5465 and a statement thereof may be presented and settled afterwards as provided in section 5467, and within like periods after entry of the order, upon appeal from which such decision is reviewable.

§ 283, C. Civ. P.
am'd.

§ 5469. Application to supreme court when judge refuses to settle. If the judge in any case refuses to allow an exception in accordance with the facts, the party desiring the statement settled may apply by petition to the supreme court to prove the same. The application may be made in the manner and under such regulations as that court may prescribe and the statement when proven must be certified by a justice thereof as correct and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause.

§ 284, C. Civ. P.
5, c. 21, 1887.
am'd.

§ 5470. In case of vacancy. A judge may settle and sign a statement of the case after as well as before he ceases to be such judge. If such judge before the statement of the case is settled dies, is removed from office, becomes disqualified, is absent from the state or refuses to settle the same, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the supreme court may by its order or rules direct.

ARTICLE 9. — OF NEW TRIALS.

§ 285, C. Civ. P.

§ 5471. New trial defined. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury or court or by referees.

§ 5472. Causes for new trial. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved for any of the following causes materially affecting the substantial rights of such party: § 286, C. Civ. P.

1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial.

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict or to a finding on any question submitted to them by the court by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Newly discovered evidence material to the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

5. Excessive damages appearing to have been given under the influence of passion or prejudice.

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

7. Error in law occurring at the trial and excepted to by the party making the application.

§ 5473. How application made. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the preceding section, it must be made upon affidavit; for any other cause it may be made at the option of the moving party either upon a statement of the case or upon the minutes of the court. On such hearing reference may be had in all cases to the pleadings and orders of the court on file; and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence and stenographic report of the testimony or other papers used upon the trial. § 287, C. Civ. P.
§ 2, c. 33, 1881.
am'd.

§ 5474. Notice. Contents. When heard. The party intending to move for a new trial must within twenty days after the verdict of the jury, if the action was tried by jury, or after notice of the decision of the court, if the action was tried without a jury, serve upon the adverse party a notice of his intention designating the statutory grounds upon which the motion will be made and whether the same will be made upon affidavits, or the minutes of the court, or a statement of the case: § 288, C. Civ. P.
§ 6, c. 21, 1887.
am'd.

1. If the motion is to be made upon affidavits the moving party must within thirty days after serving the notice, or such further time as the court in which the action is pending may allow, serve a copy of such affidavits upon the adverse party, who shall have ten days to serve counter affidavits, a copy of which must be served upon the moving party. Motions for new trial on the ground of newly discovered evidence may be made at any time before the close of the term next succeeding that at which the trial was had.

2. If the motion is to be made upon a statement of the case and no statement has already been settled as hereinbefore provided the moving party shall have the same time after service of the notice of intention to move for a new trial to prepare and obtain a settlement of a statement of the case as is provided in section 5467.

3. When the motion is to be made upon the minutes of the court and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of intention must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion is error in law occurring at the trial and excepted to by the moving party, the notice of intention must specify the particular errors upon which the party will rely. If the notice does not contain the specifications herein stated and the motion is made on the minutes of the court, the motion must be denied. If an appeal is taken from the decision on such motion the party appealing shall have the same time after such decision in which to prepare and have settled a statement of the case to be used on appeal as is provided in section 5467.

§ 289, C. Civ. P.

§ 5475. Verdict vacated by court. The verdict of a jury may also be vacated and a new trial granted by the court in which the action is pending on its own motion without the application of either of the parties, when there has been such plain disregard by the jury of the instructions of the court or the evidence in the case as to satisfy the court that the verdict was rendered under a misapprehension of such instructions or under the influence of passion or prejudice.

§ 290, C. Civ. P.
7, c. 21, 1887.
am'd.

§ 5476. Where hearing may be had. The application for a new trial shall be heard at the earliest practicable period after service of the notice of intention, if the motion is to be heard upon the minutes of the court, and in other cases, after the affidavits are served or the statement of the case is filed, and may be brought to a hearing in open court or before the judge at chambers in any county in the district in which the action was tried by either party upon notice of eight days to the adverse party, specifying the time and place of hearing. On such hearing reference may be had in all cases to the pleadings and orders of the court on file and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence and stenographic report of the testimony on file.

§ 8, c. 21, 1887.
m'd.

§ 5477. Time may be extended. The court or judge may upon good cause shown in furtherance of justice extend the time within which any of the acts mentioned in sections 5467 and 5474 may be done, or may, after the time limited therefor has expired, fix another time within which any of such acts may be done.

§ 9, c. 21, 1887.
m'd.

§ 5478. Statement used on appeal. A statement of the case settled as provided in section 5467, whether the same is used upon a motion for a new trial or not, may be used on appeal from the final judgment.

ARTICLE 10. — MANNER OF GIVING, ENTERING AND SATISFYING JUDGMENTS.

§ 291, C. Civ. P.

§ 5479. Judgment entered by clerk on order. Judgment upon an issue of law, or fact, or upon confession, or upon failure to answer, may be entered by the clerk upon the order of the court or of the judge thereof.

§ 5480. Notice of entry of judgment served. Within ten days after entry of judgment in an action in which an appearance has been made, notice of such entry together with a general description

of the nature and amount of relief and damages thereby granted, shall be served by the prevailing upon the adverse party.

§ 5481. **Against whom. Counterclaim.** Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and the court may determine the ultimate rights of the parties on each side as between themselves. § 292, C. Civ. P.

2. If a counterclaim established at a trial exceeds the plaintiff's demand so established, judgment for the defendant must be given for the excess; and the court may grant to the defendant any affirmative relief to which he may be entitled.

3. In an action against several defendants the court may in its discretion render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper.

4. The court may also dismiss the complaint with costs in favor of one or more defendants in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. In an action brought by or against a married woman judgment may be given against her as well for costs as for damages or both for such costs and for such damages in the same manner as against other persons, to be levied and collected of her separate estate and not otherwise.

§ 5482. **Relief limited by complaint.** The relief granted to the plaintiff, if there is no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case the court may grant him relief consistent with the case made by the complaint and embraced within the issue. § 293, C. Civ. P.

§ 5483. **Death before judgment.** If a party dies after a verdict or decision upon any issue of fact and before judgment, the court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate. § 294, C. Civ. P.

§ 5484. **To recover personalty.** In an action to recover the possession of personal property the judgment for the plaintiff may be for the possession; or for the recovery of possession, or the value thereof in case a delivery cannot be had and for damages for the taking and detention thereof. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had and damages for the taking and detention thereof. § 295, C. Civ. P. am'd.

§ 5485. **Putting in possession.** Every judgment that contains a direction for the sale of any specific real property may also direct the delivery of the possession of such property to the purchaser; and the officer receiving the execution or order of sale may enforce such judgment by putting the purchaser in possession of the premises in like manner and with like authority as if special execution had been directed to him for that purpose. § 296, C. Civ. P.

§ 5486. **Transfer of title or discharge of incumbrance by court.** In all actions arising under chapter 30 of this code and in actions commenced for the satisfaction of record of mortgages or other liens upon real property or for the specific performance of contracts relating to real property the court may by its judgment without any § 1, c. 111, 1889. am'd.

act on the part of the defendant transfer the title to real property and remove or discharge a cloud or incumbrance thereon, and a certified copy of such judgment may be recorded in the office of the register of deeds of the county in which the property affected is situated.

§ 297, C. Civ. P.

§ 5487. Judgment book. The clerk shall keep among the records of the court a book for the entry of the judgments to be called the "judgment book."

§ 298, C. Civ. P.

§ 5488. How judgment entered. The judgment shall be entered in the judgment book and shall specify clearly the relief granted or other determination of the action.

§ 299, C. Civ. P.
am'd.

§ 5489. Judgment roll. Contents. Unless the party or his attorney shall furnish a judgment roll, the clerk immediately after entering the judgment shall attach together and file the following papers, which shall constitute the judgment roll:

1. In case the complaint is not answered by any defendant the summons and complaint or copies thereof, the affidavit for service of summons by publication, if any, proof of service and that no answer has been received, the report, if any, and a copy of the judgment.

2. In all other cases, the summons, pleadings or copies thereof, the verdict, decision or report, the offer of the defendant, a copy of the judgment, the statement of the case, if any, and all orders and papers in any way involving the merits and necessarily affecting the judgment.

§ 300, C. Civ. P.
§ 1, c. 82, 1883.

§ 5490. Docketing in other counties. Secured on appeal. Effect. On filing a judgment roll upon a judgment directing in whole or in part the payment of money, it may be docketed with the clerk of the court, in which it was rendered, in a book to be known as the judgment docket, and in any other county upon filing with the clerk of the district court for said county a transcript of the original docket, and it shall be a lien on all the real property except the homestead in the county where the same is so docketed of every person against whom any such judgment shall be rendered, which he may have at the time of the docketing thereof in the county in which such real property is situated or which he shall acquire at any time thereafter, for ten years from the time of docketing the same in the county where it was rendered, and no judgment heretofore rendered shall after the passage of this act become a lien on real property as herein provided, unless it is docketed in the county where the land is situated; provided, however, that when the land is situated in an unorganized county said judgment may be filed in the county to which such unorganized county is attached for judicial purposes, and it shall thereupon become a lien upon the land of the judgment debtor in such unorganized county; but when said unorganized county becomes organized the said lien must be filed in the office of the clerk of the district court of such county within ninety days after the organization of such county or it shall cease to be a lien upon such real estate. But whenever an appeal from any judgment shall be pending and the undertaking requisite to stay execution on such judgment shall have been given and the appeal perfected as provided in this code, the court in which such judgment was recovered may, on special motion after notice to the person owning the judgment, direct the clerk to make an entry on the judgment docket that the judgment is secured on appeal, and thereupon it shall cease during the pendency of the appeal to be a lien on the real property of the judgment debtor as against purchasers and mortgagees in good faith and for value.

§ 5491. Duties of clerk on filing transcript. Upon the filing of a transcript of judgment in the office of any clerk of the district court as provided in the last section the clerk with whom such transcript is filed shall forthwith by mail notify the clerk issuing the same of the time when such judgment was docketed in the county in which such transcript is filed, and a memorandum showing the time of such docketing shall be entered by the clerk who issued the transcript upon his judgment docket.

§ 5492. Docketing judgments of United States courts in clerk of district court's office. A transcript of the docket entry of any judgment or decree rendered in any district or circuit court of the United States within this state, duly certified by the clerk of such district or circuit court of the United States, may be filed with the clerk of the district court of any county in this state, and the same shall be immediately docketed by said clerk in the same manner as judgments rendered in the district courts in this state are docketed. § 1, c. 83, 1890.

§ 5493. Becomes a lien from date of docketing. From the date of such docketing and not before such judgment or decree shall be a lien upon all the real estate of the judgment debtor not exempt from execution in such county, owned by him or the title to which he may subsequently acquire in the county where such docketing is made, in the same manner and to the same extent and under the same conditions only as if such judgment or decree had been rendered by the district court of this state. § 2, c. 83, 1890.

§ 5494. How act construed. Nothing herein shall be construed to require the docketing of a judgment or decree of the United States court in the office of the clerk of the district court of this state in the same county, in which a judgment or decree of the United States court is rendered, in order that such judgment or decree shall be a lien upon any property within such county. § 3, c. 83, 1890.

§ 5495. How judgment docketed. The clerk shall docket the judgment by entering alphabetically in the judgment docket the names of the judgment debtor or debtors, the names of the party or parties in whose favor the judgment was rendered, the sum recovered or directed to be paid in figures, the date of the judgment, the year, day, hour and minute when the judgment roll or transcript was filed, the year, day, hour and minute when the judgment was docketed in his office and the page in the judgment book where the same is entered, the name of the court in which the judgment was rendered, the name of the attorney or attorneys for the party recovering the judgment and, if there are two or more judgment debtors, such entries must be repeated under the initial letter of the surname of each. § 301, C. Civ. P.

§ 5496. Assignment of judgment to be entered in judgment book. Every clerk of the district court upon the presentation to him of an assignment of any judgment rendered or docketed therein, signed by the party in whose favor the judgment is rendered, his executor or administrator and acknowledged in the manner prescribed by law for the acknowledgement of deeds, must immediately enter the same in the judgment book and must note the fact of such assignment, the date thereof and the name of the assignee in the margin of the entry of such judgment in such judgment book and also upon the docket of such judgment. And the clerk of the district court of any other county or subdivision where such judgment is docketed must note the fact of such assignment, the date thereof and

the name of the assignee upon the presentation to and filing with him of a certified copy of the original judgment docket with the said facts of such assignment noted thereon.

§ 303, C. Civ. P.

§ 5497. Cancellation and discharge. Any judgment rendered or docketed in the district courts of the state may be canceled and discharged by the clerk thereof:

1. Upon the filing with him of an acknowledgment of the satisfaction thereof signed by the party in whose favor the judgment was obtained, his attorney of record, his executor, administrator or assignee and duly acknowledged in the manner required to admit a deed of real property to record.

2. Upon the return of any execution issued upon such judgment wholly satisfied, or the presentation of a satisfaction piece duly executed and acknowledged as hereinbefore provided, to the clerk of any district court, he must immediately note upon the judgment docket and in the margin of the judgment book where such judgment is entered the date of such cancellation, and the manner thereof, by satisfaction piece filed, execution returned satisfied, or otherwise.

3. And any partial satisfaction of the judgment may be made and noted upon the records in like manner; and thereupon all judgments and liens thereby created must be taken and deemed to be canceled and discharged to the extent of the entries so made upon the judgment docket and no more.

4. And the clerk of any other district court, or the district court of any other county or subdivision, wherein a transcript of any such judgment docket shall have been filed and judgment docketed accordingly, must cancel the same in like manner upon his judgment docket upon the filing in his office of a certified copy of the original judgment docket entry duly canceled as hereinbefore provided.

§ 334, C. Civ. P.

§ 5498. Docket of justice's judgment. Lien. A justice of the peace on the demand of a party, in whose favor he shall have rendered a judgment, must give a certified transcript thereof, which may be filed in the office of the clerk of the district court of the county or subdivision in which the judgment was rendered, and such clerk must thereupon enter such judgment in the judgment book and upon the judgment docket; and from the time of the docketing thereof it becomes a judgment of such district court and a lien upon real property, and a certified transcript of the docket of such judgment may be filed and the judgment docketed accordingly in any other county or subdivision with the like effect in every respect as if the judgment had been rendered in the district court where such judgment is filed.

§ 305, C. Civ. P.

§ 5499. Mutual judgments set off. Mutual final judgments may be set off pro tanto the one against the other by the court upon proper application and notice.

CHAPTER 11.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

ARTICLE 1.—THE EXECUTION AND LEVY.

§ 5500. **Execution at any time within ten years.** The party in whose favor judgment has been given and in case of his death his personal representatives duly appointed may at any time within ten years after the entry of judgment proceed to enforce the same by execution as provided in this chapter. § 306, C. Civ. P. am'd.

§ 5501. **For delivery or sale.** When a judgment requires the payment of money or the delivery of real or personal property, the same may be enforced in those respects by execution as provided in this chapter. When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment by making the sale and applying the proceeds in conformity therewith. When it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuses, he may be punished by the court as for contempt. § 308, C. Civ. P.

§ 5502. **Three kinds of execution.** There shall be three kinds of execution: one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property or such delivery with damages for withholding the same. § 309, C. Civ. P.

§ 5503. **Against property. To different counties.** When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. When it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties. Real property adjudged to be sold must be sold in the county where it lies by the sheriff of such county, or by a referee appointed by the court for that purpose, and thereupon the sheriff or referee must execute a certificate of sale to the purchaser as hereinafter provided. An execution may issue against a married woman, and it must direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise. § 310, C. Civ. P.

§ 5504. **When against person.** If the action is one in which the defendant might have been arrested as provided in section 5304 and section 5306, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor unless an order of arrest has been served as in this code provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by section 5304. § 311, C. Civ. P.

§ 312, C. Civ. P.

§ 5505. Issue and contents of execution. The writ of execution must be issued in the name of the state of North Dakota, attested in the name of the judge, sealed with the seal of the court and subscribed by the clerk, and directed to the sheriff, or to the coroner when the sheriff is a party or interested; and it must intelligibly refer to the judgment, stating the court, the county where the judgment roll or transcript is filed, the names of the parties, the amount of judgment, if it is for money, and the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

1. If it is against the property of the judgment debtor, to satisfy the judgment with interest and accruing costs out of the personal property of such debtor; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county or at any time thereafter.

2. If it is against real or personal property in the hands of personal representatives, heirs, devisees, legatees or tenants of real property or trustees, to satisfy the judgment out of such property.

3. If it is against the person of the judgment debtor, to arrest such debtor and commit him to the jail of the county, until he shall pay the judgment or be discharged according to law.

4. If it is for the delivery of the possession of real or personal property, to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages or rents or profits recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed or at any time thereafter, and shall in that respect be deemed an execution against property.

§ 313, C. Civ. P.

§ 5506. Time of return. The execution shall be returnable within sixty days after its receipt by the officer to the clerk with whom the record of judgment is filed.

§ 314, C. Civ. P.
am'd.

§ 5507. Property liable to execution. Manner of levy. All goods, chattels, moneys and other property both real and personal or any interest therein of the judgment debtor not exempt by law and all property and rights of property seized and held under attachment in the action are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, and any interest in real or personal property and all other property not capable of manual delivery shall be liable to be taken on execution and sold as hereinafter provided. The levy of an execution shall be made in the same manner as a levy under a warrant of attachment.

§ 5508. Pledged or mortgaged property may be levied on. When property is pledged or mortgaged or subject to a lien for the payment of money or the performance of any obligation the right and interest of the execution debtor therein may be sold on execution without taking possession of or removing the property to the place of sale, but the entire right and interest of such debtor in all the property separately pledged or covered by each separate mortgage or lien shall be sold together as a distinct parcel or thing and the purchaser at such sale shall acquire all the right and interest of such debtor therein.

§ 5509. Officer's proceedings on execution. When an execution is delivered to any officer, he must indorse thereon the day and hour when he received it and must proceed to execute the same with diligence; and if executed, an exact description of the property at length with the date of the levy, sale or other act done by virtue thereof must be indorsed upon or appended to the execution; and if the writ was not executed or executed in part only, the reason in such case must be stated in the return. If no personal property is found an indorsement to that effect must be made on the writ before levy is made on real property. § 315, C. Civ. P.

§ 5510. Levy and sale. The officer must execute the writ by levying on the property of the judgment debtor, collecting the things in action by suit in his own name, if necessary, or by selling the same, selling the other property, and paying to the plaintiff the proceeds, or so much thereof as will satisfy the execution. § 316, C. Civ. P.

§ 5511. Amount levied. When lien on personalty. The officer must in all cases select such property and in such quantities as will be likely to bring the exact amount required to be raised as nearly as practicable, and having made one levy, may at any time thereafter, make other levies if he deems it necessary. But no writ of execution shall be a lien on personal property before the actual levy thereof. § 317, C. Civ. P.

§ 5512. Things in action. Judgments, bank bills and other things in action may be sold or appropriated as provided in the next following section, and assignment thereof by the officer shall have the same effect as if made by the defendant. § 318, C. Civ. P.

§ 5513. What need not be sold. Money levied on may be appropriated without being advertised or sold. The same may be done with bank bills, drafts, promissory notes or other papers of the like character, if the plaintiff will receive them at their par value as cash, or if the officer can exchange them for cash at that value. § 319, C. Civ. P.

§ 5514. Payment to sheriff by third person. After the rendition of the judgment any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness, or so much thereof as is necessary to satisfy the execution and the sheriff's receipt shall be a sufficient discharge therefor. § 320, C. Civ. P.

§ 5515. Claim by third person. Sheriff's jury. If the property levied on is claimed by a third person as his property, the sheriff may summon from his county six persons qualified as jurors between the parties to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the sheriff; and if their verdict is in favor of the claimant the sheriff may relinquish the levy, unless the judgment creditor gives him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff and the witnesses must be paid by the claimant, if the verdict is against him; otherwise by the plaintiff. Each party must deposit with the sheriff before the trial the amount of his fees and the fees of the jury and the sheriff must return to the prevailing party the amount so deposited by him. § 321, C. Civ. P.

ARTICLE 2. — EXEMPTIONS.

§ 5516. Property exempt from all process. Except as hereinafter provided the property mentioned in this chapter is exempt § 322, C. Civ. P. am'd.

to the head of a family as defined by chapter 39 of the civil code from attachment or mesne process and from levy and sale upon execution and from any other final process issued from any court.

§ 323, C. Civ. P.

§ 5517. Absolute exemptions. The property mentioned in this section is absolutely exempt from all such process, levy or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. The family bible and all school books used by the family and all other books used as a part of the family library not exceeding in value one hundred dollars.
5. All wearing apparel and clothing of the debtor and his family.
6. The provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year.
7. The homestead as created, defined and limited by law.

§ 324, C. Civ. P.
am'd.

§ 5518. Additional exemptions. In addition to the property mentioned in the preceding section the head of the family may by himself or his agent select from all other of his personal property not absolutely exempt goods, chattels, merchandise, money or other personal property not to exceed in the aggregate fifteen hundred dollars in value, which is also exempt and must be chosen and appraised as hereinafter provided.

§ 325, C. Civ. P.
am'd.

§ 5519. Specific alternative exemptions. Instead of the exemption granted in the preceding section the head of the family may select and choose the following property, which shall then be exempt:

1. All miscellaneous books and musical instruments for the use of the family not exceeding five hundred dollars in value.
2. All household and kitchen furniture, including beds, bedsteads and bedding used by the debtor and his family not exceeding five hundred dollars in value; and in case the debtor shall own more than five hundred dollars worth of such property, he must select therefrom such articles to the value of five hundred dollars leaving the remainder subject to legal process.
3. Three cows, ten swine, one yoke of cattle and two horses or mules or two yokes of cattle, or two spans of horses or mules, one hundred sheep and their lambs under six months old and all wool of the same and all cloth or yarn manufactured therefrom, the necessary food for the animals hereinbefore mentioned for one year either provided or growing, or both, as the debtor may choose; also one wagon, one sleigh, two plows, one harrow and farming utensils, including tackle for teams, not exceeding three hundred dollars in value.
4. The tools and implements of any mechanic, whether a minor or of age, used and kept for the purpose of carrying on his trade or business, and in addition thereto stock in trade not exceeding two hundred dollars in value. The library and instruments of any professional person not exceeding six hundred dollars in value.

§ 326, C. Civ. P.
§ 1, c. 55, 1885.

§ 5520. Those by number chosen; by value appraised.

All the articles enumerated in the preceding section, which are exempt by limitation of number, must be chosen by the debtor, his agent or attorney: so, also, all property exempt by limitation of value must be determined by an appraisement made under the direction of the sheriff or other officer. Whenever any debtor, against whom an execution, warrant of attachment or other process has been issued, desires to

avail himself of the benefit of section 5518 of this code, said debtor, his agent or attorney, shall make a schedule of all his personal property of every kind and character, including money on hand and debts due and owing to the debtor and deliver the same to the officer having the execution, warrant of attachment or other process, which said schedule shall be subscribed and sworn to by the debtor, his agent or attorney, and any property owned by the debtor and not included in said schedule shall not be exempt as aforesaid.

§ 5521. **How appraisers selected.** To make the appraisement the debtor, his agent or attorney must select one person and the creditor, his agent or attorney, another person, and these two so selected, a third person, who must all be disinterested citizens of the county, not related to either party nearer than the fourth degree. If the two fail to agree upon the third person, the sheriff or other officer must select the third person; and in like manner, if either the debtor or creditor fails or refuses upon notice to select a person to act as one of the appraisers, the sheriff or other officer must select one for them.

§ 327, C. Civ. P.

§ 5522. **Oath and duties of appraisers.** The three appraisers so selected must take and subscribe an oath before the sheriff or other officer, to be attached to the inventory of appraisement, that they will truly, honestly and impartially appraise the property of the debtor. The property must be appraised at the actual value of the several articles at the place where they are situated as near as can be determined, and must be set down in an inventory by articles or by lots when definitely descriptive with the value opposite. From the appraisement so made, if over the limitation in value, the debtor, his agent or attorney may select the amount in value of fifteen hundred dollars, or the alternative amounts in value of each class, leaving the remainder, if any, in either case subject to legal process.

§ 328, C. Civ. P.
§ 2, c. 55, 1885.

§ 5523. **Wife, or child over sixteen, may act.** If in any case the debtor neglects or refuses or for any cause fails to claim the whole or any of the aforesaid exemptions, his wife is entitled to make such claim or demand and to select and choose the property, to select and designate one of the appraisers and to do all other acts necessary in the premises the same and with like effect as the debtor himself might do; and if she neglects, refuses or for any cause fails so to do in whole or in part, then one of their children of sixteen years of age or upwards, being a member of the family, may do so in like manner and with like effect.

§ 329, C. Civ. P.

§ 5524. **Sheriff's inventory of exemptions.** The sheriff or other officer having any process of levy or sale must make return with his writ or warrant of any inventory and appraisement of any such exempted or other personal property.

§ 330, C. Civ. P.

§ 5525. **Notice to debtor. Claim within three days.** In all cases of a levy upon personal property by the sheriff, constable or other officer, he must give notice thereof to the debtor, his attorney, agent or wife or, failing conveniently to find either, to such child as is described in section 5523; and the debtor or such other person for him must claim or demand the benefit of these exemptions within three days after such notice from the officer; and said notice of levy may be by copy or by reading.

§ 331, C. Civ. P.

§ 5526. **Cases in which only absolute exemptions are allowed.** No personal property except absolute exemptions shall be exempt from execution or attachment in an action for laborer's or mechanic's wages or for a debt incurred for property obtained under

§ 332, C. Civ. P.
§ 1, c. 34, 1881.

false pretenses; and no personal property shall be exempt from such process in an action for the collection of the bills of a legally practicing physician for professional service or medicine except absolute exemptions and household and kitchen furniture, stoves and two cows, the value of which, exclusive of absolute exemptions, shall not exceed five hundred dollars, which value in case of dispute shall be determined by appraisers to be selected in accordance with the provisions of section 5521.

§ 1, c. 50, 1883.
am'd. **§ 5527. Property not exempt in action for its purchase price.** No property shall be exempt from execution or attachment in an action brought for its purchase price or any part thereof.

§ 333, C. Civ. P.
am'd. **§ 5528. Partnership can claim but one exemption.** A partnership firm can claim but one exemption of fifteen hundred dollars in value, or alternative property, when so applicable, instead thereof, out of the partnership property. All partnership property claimed as exempt shall constitute a part of the exemptions of the several partners, the same being divided in proportion to the interests of the partners in the firm assets, and in no case shall the aggregate exemptions of the several partners exceed the amount which would have been allowed to them if the partnership had not existed.

§ 333, C. Civ. P. **§ 5529. When no exemptions.** Except those made absolute, the exemptions herein provided for must not be construed to apply to the following persons:

1. To a corporation for profit.
2. To a nonresident.
3. To a debtor who is in the act of removing with his family from the state; or,
4. Who has absconded, taking with him his family.

§ 334, C. Civ. P. **§ 5530. Only absolute exemptions against fines, penalties and costs.** No property, either real or personal, except the homestead and other exemptions made absolute shall be exempt from levy, seizure and sale by virtue of any final writ or process issued on a judgment for fines, penalties or costs of criminal prosecutions; and no property except the homestead and other exemptions made absolute, and personal property of any kind in addition thereto to the value of five hundred dollars, shall be exempt from levy, seizure or sale by virtue of any final writ or process issued on a judgment for forfeitures of undertakings and bonds, or of recognizance taken and entered in criminal cases.

ARTICLE 3. — SALES.

§ 335, C. Civ. P. **§ 5531. Personalty. Notice of sale. Perishable.** The officer, who levies upon personal property by virtue of an execution, must before he proceeds to sell the same cause public notice to be given of the time and place of such sale for at least ten days before the day of sale. The notice must be given by advertisement published in some newspaper printed in the county or subdivision or, in case no newspaper is printed therein, by posting up advertisements in five public places in the county. Perishable property may be sold by order of the court or a judge thereof, prescribing such notice, time and manner of sale as may be reasonable, considering the character and condition of the property.

§ 5532. Real property. Same. Before any real property or interest therein taken on execution shall be sold the officer making such sale must cause public notice of the time and place thereof in manner following: § 336, C. Civ. P.

1. If there is a newspaper printed in the county or subdivision, where the real property to be sold is situated, such notice must be given by advertisement in some newspaper printed in such county or subdivision, once a week, for at least thirty days prior to making such sale.

2. In case there is no newspaper printed in such county or subdivision, then the officer making such sale must cause such advertisement to be made by posting a copy of such advertisement on the outer door of the courthouse or building wherein the district court of the county or subdivision was last held, and in five other public places in the county. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

§ 5533. Where sale made. All sales of real property, or any interest therein, under execution, must be held at the courthouse, if there is one in the county or subdivision in which such real property is situated, and if there is no courthouse, then at the door of the house in which the district court was last held, and if there is no courthouse and no district court has been held in the county or subdivision, then at such place within the county or subdivision as the sheriff shall designate in his notice of sale. § 337, C. Civ. P.

§ 5534. Time and manner of sale. All sales of property under execution must be made at public auction to the highest bidder between the hours of nine in the morning and four in the afternoon. After sufficient property has been sold to satisfy the execution no more can be sold. No sheriff or other officer, nor his deputy, holding the execution or making the sale of property, either personal or real, can become a purchaser or be interested directly or indirectly in any purchase at such sale, and every purchase so made shall be considered fraudulent and void. When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property consisting of several known lots or parcels they must be sold separately. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the sheriff or other officer must follow such directions. § 338, C. Civ. P.

§ 5535. Postponements. When there are no bidders or when the amount offered is grossly inadequate, or when from any cause the sale of any real or personal property upon execution or upon the foreclosure of a mortgage or other lien is prevented from taking place on the day fixed, the sheriff, or person making the same, may postpone the sale for not more than three days without being required to give any further notice thereof, but he shall not make more than two such postponements and such postponements must be publicly announced when and where the sale should have taken place. Such sale may be postponed for a longer period than three days by continuing the publication of the original notice of sale together with § 339, C. Civ. P.
§ 1, c. 136, 1883.
am'd.

notice of such postponement, specifying the time and place at which such postponed sale will be made.

§ 340, C. Civ. P.

§ 5536. Surplus paid defendant. When the property sells for more than the amount required to be collected, the surplus must be paid to the defendant, unless the officer has another execution in his hands on which said surplus may be rightfully applied.

§ 341, C. Civ. P.
am'd.

§ 5537. Sale after sixty days. Abandonment of levy. In case of the failure of the sale by reason of irregularities in giving notice thereof, or of its postponement, the property may be sold upon proper notice by virtue of the execution after the expiration of the sixty days allowed for the return thereof, and the officer in his return shall set forth the facts regarding such failure or postponement; or the plaintiff may in writing filed with the clerk abandon such levy upon paying the costs thereof; in which case execution may issue with the same effect as if none had been issued.

§ 342, C. Civ. P.

§ 5538. Purchaser's right. Sheriff's certificate. Upon a sale of real property the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor thereto: and when the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this chapter. The officer must give to the purchaser a certificate of sale, containing:

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.
4. When subject to redemption it must be so stated.

Such certificate must be executed by the officer and acknowledged or proved as is or may be required by law for deeds of real property and may be recorded in the office of the register of deeds of the county wherein the real property is situated; and the same or a certified copy thereof certified by such register shall be taken and deemed evidence of the facts therein recited and contained.

ARTICLE 4. — CONFIRMATION.

§ 343, C. Civ. P.

§ 5539. Proceedings upon confirmation. If the court upon the return of any writ of execution for the satisfaction of which any real property or interest therein has been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has in all respects been made in conformity to the provisions of this chapter, the court must make an order confirming the sale and directing the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale and an order that the officer make to the purchaser a deed of such real property, or interest therein, at the expiration of one year from the day of sale unless the same is redeemed as herein provided. And the officer after making such sale may retain the purchase money in his hands, until the court shall have examined his proceedings as aforesaid, when he must pay the same to the person entitled thereto by order of the court.

ARTICLE 5. — REDEMPTION.

• § 344, C. Civ. P.

§ 5540. Who may redeem. Redemptioner. Property sold subject to redemption, or any part sold separately, may be redeemed in

the manner hereinafter provided by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest.
2. A creditor having a lien by judgment or mortgage on the property sold or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are in this chapter termed redemptioners.

§ 5541. Payment on and period for redemption. The judgment debtor or redemptioner may redeem the property from the purchaser within one year after the sale on paying the purchaser the amount of his purchase with twelve per cent interest thereon together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase and interest at the same rate on such amount; and if the purchaser is also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest. § 345, C. Civ. P.

§ 5542. Successive redemptions. Payments. If property is so redeemed by a redemptioner, another redemptioner may within sixty days after the last redemption again redeem it from the last redemptioner on paying the sum paid on such last redemption with like interest thereon in addition as provided by the preceding section and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount and, in addition, the amount of any liens held by said last redemptioner prior to his own with interest; but the judgment on which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption on paying the sum paid on the last previous redemption with interest at the same rate as provided for the first redemption in section 5541 in addition and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest. § 346, C. Civ. P.

§ 5543. Record of redemption. Written notice of redemption must be given to the sheriff and a duplicate filed with the register of deeds of the county, and if any taxes or assessments are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the register of deeds; and if such notice is not filed, the property may be redeemed without paying such tax, assessment or lien. § 347, C. Civ. P.

§ 5544. Period for deed. Debtor's right. If no redemption is made within one year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. § 348, C. Civ. P.

§ 5545. Debtor's redemption. If the debtor redeems, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeems, the effect of the sale is § 349, C. Civ. P.

terminated and he is restored to his estate. Upon a redemption by the debtor the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the register of deeds of the county in which the property is situated, and the register of deeds must note the record thereof in the margin of the record of the certificate of sale.

§ 350, C. Civ. P. **§ 5546. Payments to whom.** The payments mentioned in the last five sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale.

§ 351, C. Civ. P. **§ 5547. Requisite papers.** A redemptioner must produce to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

1. A copy of the docket of the judgment, under which he claims the right to redeem, certified by the clerk of the district court of the county where the judgment is docketed or, if he redeems upon a mortgage or other lien, a note of the record thereof certified by the register of deeds.

2. A copy of the assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto.

3. An affidavit by himself or his agent showing the amount then actually due on the lien.

§ 352, C. Civ. P. **§ 5548. Waste restrained. Use of premises.** Until the expiration of the time for redemption the court may restrain the commission of waste on the property by order granted with or without notice on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption to continue to use it in the same manner in which it was previously used or to use it in the ordinary course of husbandry or to make the necessary repairs of buildings thereon or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family, while he occupies the property.

§ 353, C. Civ. P. **§ 5549. Purchaser entitled to rents. Account for.** The purchaser from the time of the sale until a redemption and a redemptioner from the time of his redemption until another redemption is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold, preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor before the expiration of the time allowed for such redemption demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If the purchaser or his assigns shall for a period of one month from and after such demand fail or refuse to give such statement, such redemptioner or debtor may bring an action in the district court of the county where the real property is situated to compel an accounting and disclosure of such rents and profits and until fifteen days from

and after the final determination of such action the right of redemption is extended to such redemptioner or debtor.

ARTICLE 6. — THE SHERIFF'S DEED.

§ 5550. **Effect of Contents.** Upon the expiration of the period for redemption the proper officer must make the purchaser, or the party entitled thereto, a deed of the real property sold. The deed shall be sufficient evidence of the legality of such sale and the proceedings therein, until the contrary is proved, and shall vest in the purchaser or other party as aforesaid as good and perfect a title in the premises therein mentioned and described as was vested in the debtor at or after the time when such real property became liable to the satisfaction of the judgment. And such deed or conveyance, to be made by the sheriff or other officer, must recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of such judgment by virtue whereof the said real property was sold as aforesaid, and must be executed, acknowledged or proved and recorded as is or may be provided by law to perfect the conveyance of real property in other cases. § 354, C. Civ. P.

§ 5551. **Sheriff's successor may make.** If the term of service of the sheriff or other officer, who has made or shall hereafter make sale of any real property shall expire or if the sheriff or other officer shall be absent or be rendered unable by death, or otherwise, to make a deed or conveyance of the same, any succeeding sheriff or other officer may execute to the purchaser or person entitled thereto or his legal representatives a deed of conveyance of said real property so sold: and such deed shall be as good and valid in law and have the same effect as if the sheriff or other officer who made the sale had executed the same. § 355, C. Civ. P.

ARTICLE 7. — GENERAL PROVISIONS.

§ 5552. **Printer's fees in advance.** The officer who levies upon personal property or real property or who is charged with the duty of selling the same by virtue of any writ of execution may refuse to publish a notice of the sale thereof by advertisement in a newspaper, until the party for whose benefit such execution is issued, his agent, or attorney shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice. Before any officer shall be excused from publishing the notice as aforesaid, he must demand of the party for whose benefit the execution was issued, his agent or attorney, if either of them resides in the county, the amount of money for such fees. § 356, C. Civ. P.

§ 5553. **Reversal does not defeat judgment.** If any judgment, in satisfaction of which any real property is sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser; but in such case restitution must be made by the judgment creditor of the money for which such real property was sold with lawful interest thereon from the day of sale. § 357, C. Civ. P.

§ 5554. **Execution against principal first.** In all cases when judgment is rendered upon any instrument in writing, in which two or more persons are severally bound, and it shall be made to appear to the court by parol or other testimony, that one or more of

said persons so bound signed the same as surety or bail for his codefendant, the court must in entering judgment thereon state which of the defendants is principal debtor and which are sureties or bail. And execution issued on such judgment must command the sheriff or other officer to cause the money to be made of the personal property and real property of the principal debtor, but for want of sufficient property of the principal debtor to make the same to cause the same to be made of the personal and real property of the surety or bail. In all cases the property, both personal and real, of the principal debtor within the jurisdiction of the court must be exhausted before any of the property of the surety or bail shall be taken in execution.

§ 359, C. Civ. P.

§ 5555. Amercement of sheriff. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands, or to sell any personal or real property, or to return any writ of execution to the proper court on or before the return day, or on demand to pay over to the plaintiff, his agent or attorney of record all moneys by him collected or received for the use of said party at any time after collecting or receiving the same, except as otherwise provided, or on demand made by the defendant, his agent or attorney of record, to pay all surplus received from any sale, such sheriff or other officer shall on motion in court and two days' notice thereof in writing be amerced in the amount of said debt, damages and costs with ten per cent thereon to and for the use of said plaintiff or defendant as the case may be.

§ 360, C. Civ. P.

§ 5556. Same of clerk. If any clerk of a court shall neglect or refuse on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received in his official capacity for the use of such person, every such clerk may be amerced and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

§ 361, C. Civ. P.

§ 5557. Measure of same. When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld with ten per cent thereon.

§ 362, C. Civ. P.

§ 5558. Return of writ by mail. When execution shall be issued in any county and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution after having discharged all the duties required of him by law to inclose such execution by mail to the clerk who issued the same. On proof being made by such sheriff or coroner, that the execution was mailed soon enough to have reached the said clerk within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it does not reach the office in due time.

§ 363, C. Civ. P.

§ 5559. Procedure against officer. No sheriff shall forward by mail any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer as hereinbefore required by leaving it with him or at his office at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail at least sixty days prior to the first day of the term at which such motion shall be made. All amercements so pro-

cured shall be entered on the record of the court and shall have the same force and effect as a judgment.

§ 5560. Surety of sheriff made party. Each and every § 384, C. Civ. P.
surety of any sheriff or other officer may be made a party to the judgment rendered as aforesaid against the sheriff or other officer by action to be commenced and prosecuted as in other cases; but the property, personal or real, of any such surety shall not be liable to be taken on execution, when sufficient property of the sheriff or other officers against whom execution may be issued can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer by attachment or other proceeding at his election.

§ 5561. Officer's reimbursement. In cases when a sheriff or § 385, C. Civ. P.
other officer may be amerced and shall not have collected the amount of the original judgment, he must be permitted to take out executions and collect the amount of said judgment in the name of the original plaintiff for his own use.

CHAPTER 12.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

§ 5562. Examination of debtors for discovery. Procedure. When an execution against property of the judgment § 386, C. Civ. P.
debtor, or of any one of the several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business or, if he does not reside in the state, to the sheriff of the county, where a judgment roll or a transcript of a justice's judgment for twenty-five dollars or upwards exclusive of costs is filed, is returned unsatisfied in whole or in part, the judgment creditor at any time after such return made is entitled to an order from a judge of the court requiring such judgment debtor to appear and answer concerning his property before such judge at a time and place specified in the order within the county to which the execution was issued.

2. After the issuing of an execution against property and upon proof by affidavit of a party or otherwise to the satisfaction of the court or judge thereof, that any judgment debtor residing in the district where such judge resides has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may by an order require the judgment debtor to appear at a specified time and place to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon a return of an execution.

3. On an examination under this section either party may examine witnesses in his behalf and the judgment debtor may be examined in the same manner as a witness.

4. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor leaving the state or con-

cealing himself and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be to arrest him and bring him before such judge. Upon being brought before the judge he may be examined on oath and, if it then appears that there is danger of the debtor leaving the state, and that he has property which he has unjustly refused to apply to such judgment, ordered to enter into an undertaking with one or more sureties, that he will from time to time attend before the judge as he shall direct and that he will not during the pendency of the proceedings dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison by warrant of the judge as for contempt.

5. No person shall on examination pursuant to this chapter be excused from answering any question on the ground that his examination will tend to convict him of the commission of a fraud; but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question on the ground that he has before the examination executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

§ 367, C. Civ. P. **§ 5563. Payment to sheriff by debtor's debtor.** After the issuing of execution against property any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as shall be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

§ 368, C. Civ. P. **§ 5564. Examination of debtor's debtor.** After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor or is indebted to him in an amount exceeding ten dollars, the judge may by an order require such person or corporation or any officer or member thereof to appear at a specified time and place and answer concerning the same. The judge may also in his discretion require notice of such proceeding to be given to any party to the action in such manner as may seem to him proper. The proceedings mentioned in this section, and in section 5562 may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in the like manner and to the like effect. These provisions shall apply to all proceedings and actions now pending and not actually terminated by any final judgment or decree.

§ 369, C. Civ. P. **§ 5565. Witnesses. Attendance compelled.** Witnesses may be required to appear and testify on any proceeding under this chapter in the same manner as upon the trial of an issue.

§ 370, C. Civ. P. **§ 5566. Before referee. Answers on oath.** The party or witness may be required to attend before the judge or before a referee appointed by the court or judge; if before a referee, the examination shall be taken by the referee and certified to the judge. All examina-

tions and answers before a judge or referee under this chapter shall be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof.

§ 5567. Property applied. Wages exempt. The judge may order any property of the judgment debtor not exempt from execution in the hands either of himself or any other person or due the judgment debtor to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services at any time within sixty days next preceding the order cannot be so applied when it is made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor. § 371, C. Civ. P.

§ 5568. Receiver appointed. Transfers enjoined. The judge may also by order appoint a receiver of the property of the judgment debtor in the same manner and with like authority as if the appointment was made by the court according to section 5403. But before the appointment of such receiver the judge shall ascertain, if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor and if such proceedings are so pending, the plaintiff therein shall have notice to appear before him and shall likewise have notice of all subsequent proceedings in relation to said receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The judge may also by order forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution and any interference therewith. § 372, C. Civ. P.

§ 5569. Record of order. Whenever the judge shall grant an order for the appointment of a receiver of the property of the judgment debtor, the same shall be filed in the office of the clerk of the court where the judgment roll in the action or transcript from justice's judgment upon which the proceedings are taken, is filed; and the said clerk shall record the order in a book to be kept for that purpose in his office, to be called "book of orders appointing receivers of judgment debtors," and shall note the time of the filing of said order therein. A certified copy of said order shall be delivered to the receiver named therein and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded. But before he shall be vested with any real property of such judgment debtor, a certified copy of said order shall also be filed and recorded in the office of the register of deeds of the county in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the register of deeds of the county in which such judgment debtor resides. § 372, C. Civ. P.

§ 5570. Procedure on adverse claims. If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him or denies the debt, such interest or debt shall be recoverable only in an action against such person or corporation by the receiver; but the judge may by order forbid a transfer or other disposition of such property or interest until a sufficient opportunity is given to the receiver to commence the action and prosecute the same to judgment § 373, C. Civ. P.

and execution; but such order may be modified or dissolved by the judge granting the same at any time on such security as he shall direct.

§ 374, C. Civ. P. **§ 5571. When reference ordered.** The judge may in his discretion order a reference to a referee agreed upon by the parties or appointed by him to report the evidence or the facts and may in his discretion appoint such referee in the first order or at any time.

§ 375, C. Civ. P. **§ 5572. Allowance of witness' fees and disbursements.** The judge may allow to the judgment creditor or any party so examined, whether a party to the action or not, witness' fees and disbursements.

§ 376, C. Civ. P. **§ 5573. Punishment for contempt.** If any person, party or witness disobeys an order of the judge or referee duly served, such person, party or witness may be punished by the judge as for a contempt. And in all cases of commitment under this chapter, the person committed may, in case of inability to perform the act required or to endure the imprisonment, be discharged from imprisonment by the court or judge committing him or the court in which the judgment was rendered on such terms as may be just.

CHAPTER 13.

OF THE COSTS AND DISBURSEMENTS IN CIVIL ACTIONS.

§ 377, C. Civ. P.
1, c. 55, 1889. **§ 5574. Attorney's fees by agreement. Costs, when allowed.** The amount of fees of attorneys, solicitors and counsel in civil and criminal actions must be left to the agreement, express or implied, of the parties. But in civil actions there may be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action in addition to the disbursements now allowed by law, which allowances are termed costs.

§ 1, c. 11, 1883. **§ 5575. Amount of costs in specific cases.** When allowed the costs mentioned in section 5574 shall be as follows:

1. To the plaintiff for all proceedings before notice of trial in actions arising on contract for the recovery of money only, five dollars; in other actions, ten dollars; for all proceedings after notice of and before trial, three dollars; for each additional defendant served with process not exceeding ten, one dollar.

2. To the defendant, for all proceedings before notice of trial, five dollars; and for all proceedings after notice of and before trial, three dollars.

3. To either party, when a new trial shall be had, for all proceedings after the granting of and before such new trial, five dollars; for attending upon and taking the deposition of a witness conditionally or attending to perpetuate his testimony, two dollars; for drawing interrogatories to annex to a commission for the taking of testimony, two dollars; for making and serving a case or case containing exceptions, five dollars, except that when the case shall necessarily contain

more than fifty folios, there shall be allowed two dollars in addition thereto.

4. For every trial of an issue of fact, five dollars.

5. To either party on appeal to the supreme court before argument, five dollars; for argument, fifteen dollars; and when a judgment is affirmed, the court may in its discretion also award damages for the delay not exceeding ten per cent on the amount of the judgment.

6. To either party for every term not exceeding five, at which the cause is necessarily on the calendar and is not tried or is postponed by order of the court, three dollars; and for every term not exceeding five, excluding the term at which the cause is argued in the supreme court, five dollars.

§ 5576. Attorney's fee in instrument void. Any provision contained in any note, bond, mortgage or other evidence of debt for the payment of an attorney fee in case of default in payment or of proceedings had to collect such note, bond or evidence of debt or to foreclose such mortgage is hereby declared to be against public policy and void. § 1, c. 16, 1889.

§ 5577. Costs on foreclosure of liens. In all actions or proceedings for the foreclosure of a mortgage upon personal property or of a mortgage or other lien upon real property the plaintiff or person commencing such action or proceeding shall be entitled to tax as a part of his costs, when the amount of the debt secured by such mortgage or lien does not exceed the sum of five hundred dollars, the sum of twenty-five dollars; when the amount of the debt so secured exceeds five hundred dollars and does not exceed one thousand dollars, the sum of fifty dollars; when the amount of the debt so secured exceeds one thousand dollars and does not exceed two thousand dollars, the sum of seventy-five dollars; when the amount of the debt so secured exceeds two thousand dollars, the sum of seventy-five dollars and in addition thereto two per cent on the amount so secured in excess of two thousand dollars.

§ 5578. Costs taxed in judgment. In all actions and special proceedings the clerk must tax as a part of the judgment in favor of the prevailing party his necessary disbursements as follows: The legal fees of witnesses and of referees and other officers, the necessary expenses of taking depositions and of procuring evidence necessarily used or obtained for use on the trial, the legal fees for publication, when publication is made pursuant to law and the legal fees of the court stenographer for a transcript of the testimony when such transcript is used on motion for a new trial or in preparing a statement of the case. § 379, C. Civ. P. am'd.

§ 5579. Costs allowed to plaintiff. Costs shall be allowed of course to the plaintiff upon a recovery in the following cases: § 381, C. Civ. P. § 2, c. 55, 1883.

1. In an action for the recovery of real property or when a claim of title to real property arises on the pleadings or is certified by the court to have come in question at the trial.

2. In an action to recover the possession of personal property.

3. In the actions of which a justice's court has no jurisdiction.

4. In an action for the recovery of money when the plaintiff shall recover fifty dollars. But in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than fifty dollars dam-

ages, he shall recover no more costs and disbursements than damages. And in an action to recover the possession of personal property, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs and disbursements than damages, unless he recovers also property, the value of which with the damages amounts to fifty dollars, or the possession of property is adjudged to him, the value of which with the damages amounts to fifty dollars; such value must be determined by the jury, court or referee by whom the action is tried. When several actions shall be brought on one bond, recognizance, promissory note, bill of exchange or other instrument in writing, or in any other case for the same cause of action against several parties who might have been joined as defendants in the same action, no costs other than the disbursements heretofore allowed by law shall be allowed to the plaintiff in more than one of such actions, which must be at his election; provided, that the party or parties proceeded against in such action or actions, shall at the time of the commencement of the previous action or actions, have been openly within this state and not secreted. Costs shall be allowed of course to the defendant in the actions mentioned in this section unless the plaintiff is entitled to costs therein.

§ 3, c. 55, 1883.
am'd.

§ 5580. Costs in discretion of court. In actions other than those specified in section 5579 costs may be allowed for or against either party in the discretion of the court. In all actions when there are several defendants not united in interest and making separate defenses by separate answers and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor.

§ 383, C. Civ. P.

§ 5581. Costs of appeal. Same. In the following cases the costs of an appeal must be in the discretion of the court:

1. When a new trial shall be ordered.
2. When a judgment shall be affirmed in part and reversed in part.

§ 384, C. Civ. P.

§ 5582. On dismissal of action. When an action is dismissed from any court for want of jurisdiction or because it has not been regularly transferred from an inferior to a superior court, the costs must be adjudged against the party attempting to institute or bring up the action.

§ 385, C. Civ. P.

§ 5583. On appeal from justice. Costs must be allowed to the prevailing party in judgments rendered on appeal from justices' courts in all cases, including his costs taxed in the court below.

§ 386, C. Civ. P.

§ 5584. Interest on judgment. When the judgment is for the recovery of money, interest from the time of the verdict or report, until judgment is finally entered, must be computed by the clerk and added to the costs of the party entitled thereto.

§ 387, C. Civ. P.

§ 5585. Notice of taxing. Verification. Items. The clerk must insert in the entry of judgment on the application of the prevailing party upon five days' notice to the other, except when the attorneys reside in the same city, village or town and then upon two days' notice, the sum of the allowances for costs as provided by this code. The costs must be stated in detail and verified by the affidavit of the party or his attorney, stating in substance that the items of costs have been or will necessarily be incurred in the action or proceeding. A copy of the items of the costs and the affidavit must be served with a notice of adjustment. Whenever it shall be necessary to adjust costs in any interlocutory proceeding in an action or in any

special proceeding, the same shall be adjusted by the judge before whom the same may be heard, or the court before which the same may be decided or pending, or in such other manner as the judge or court may direct.

§ 5586. Notice of retaxation. Procedure on. Costs may also be taxed without notice. But when they are so taxed notice of retaxation thereof must immediately afterwards be given as prescribed in the last section by the party at whose instance they are taxed, in default whereof the court must upon the application of a party entitled to notice direct a retaxation with costs of the motion to be paid by the party in default. Any sum deducted upon a retaxation must be credited upon the judgment.

§ 5587. Taxation reviewed on motion. A taxation or a retaxation of costs may be reviewed by the court upon motion. The order made upon such motion may allow or disallow any item objected to before the taxing officer, in which case it has the effect of a new taxation. § 380, C. Civ. P. am'd.

§ 5588. Costs of postponement. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed in the discretion of the court or referee as a condition of granting the same. § 389, C. Civ. P.

§ 5589. Costs on motion. Upon a motion in an action or proceeding costs may be awarded, not to exceed twenty-five dollars, either absolutely or to abide the event of the action, to any party in the discretion of the court.

§ 5590. Against infant plaintiff. When costs are adjudged against a plaintiff, who is an infant or a person of unsound mind, the guardian by whom he appeared in the action must be responsible therefor and payment thereof may be enforced in the manner provided in section 5602. § 390, C. Civ. P. am'd.

§ 5591. Of trustee from trust funds. In an action prosecuted or defended by an executor, administrator, trustee of an express trust or a person expressly authorized by statute costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs must by the judgment be chargeable only upon or collected of the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defense. § 391, C. Civ. P.

§ 5592. Against state. Exception. In all civil actions prosecuted in the name of the state by an officer duly authorized for that purpose the state shall be liable for the costs in the same cases and to the same extent as private parties. If a private person is joined with the state as plaintiff he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the state until after execution is issued therefor against such private party and returned unsatisfied. § 392, C. Civ. P.

§ 5593. Against party in interest. In an action prosecuted in the name of the state for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the party plaintiff shall be charged against the party for whose benefit the action was prosecuted and not against the state. § 393, C. Civ. P.

§ 394, C. Civ. P.

§ 5594. Against assignee. In actions in which the cause of action shall, by assignment after the commencement of the action or in any other manner, become the property of a person not a party to the action, such person shall be liable for the costs, in the same manner as if he was a party and payment thereof may be enforced by attachment.

§ 395, C. Civ. P.
am'd.

§ 5595. On change of venue to county sending. In all actions or proceedings, including criminal actions, when a change of venue is had or made by the order of any court or of any judge pursuant to law, except in cases when such change is made because such action was not brought in the proper county, the county in which such action was commenced shall pay to the county in which the same is tried the following expenses arising out of such change of venue:

1. The per diem fees allowed by law to the clerk and all costs and fees of such clerk which are a lawful charge against the county.
2. The per diem fees allowed by law to the petit jurors actually in attendance upon said court.
3. The per diem fees allowed by law to the sheriff for attendance upon said court.
4. All lawful charges for boarding the jurors.
5. The legal fees of all witnesses in any criminal case or proceeding which are a lawful charge against the county.
6. The fees or compensation allowed by law to the court stenographer in attendance upon said court and such other fees allowed to such stenographer in criminal proceedings as are a lawful charge against the county.
7. All other lawful costs, fees and disbursements which are a lawful charge against the county.
8. All lawful charges and fees for subpoenaing witnesses in any criminal case or proceeding which are a proper charge against the county.

The fees of such officers, jurors and stenographer are to be estimated for each day and part of a day, not less than half a day, occupied in trying or disposing of any such action; but no costs shall be paid to the county to which a change of venue is had which are not properly chargeable against such county.

§ 396, C. Civ. P.
am'd.

§ 5596. Manner of collecting. The clerk shall make out a correct bill of all the expenses which shall accrue during any such trial as aforesaid and have the same taxed and allowed by the judge of such court; and when so taxed shall without delay transmit the same to the auditor of the county in which such action was commenced, who at the first meeting of the board of county commissioners of such county after receiving such bill shall present the same to such board; and such board shall direct the issuance of a warrant therefor in favor of the county in which such action or proceeding was had or tried, or its assigns.

§ 397, C. Civ. P.

§ 5597. Nonresident must furnish surety. In cases in which the plaintiff is a nonresident of the state or a foreign corporation, the plaintiff must before commencing such action furnish a sufficient surety for costs. The surety must be a resident of the county or subdivision where the action is to be brought and must be approved by the clerk. His obligation shall be complete by simply indorsing the summons or signing his name on the complaint as security for costs.

§ 5598. **Responsibility of surety.** He shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtains judgment or not. § 398, C. Civ. P.

§ 5599. **Dismissal when security not given.** An action in which security for costs is required by the last section and has not been given shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court such security for costs is given. § 399, C. Civ. P.

§ 5600. **Security on becoming nonresident.** If the plaintiff in an action after its commencement becomes a nonresident of the state, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections. § 400, C. Civ. P.

§ 5601. **When additional security demanded.** In an action in which security for costs has been given the defendant may at any time before judgment after reasonable notice to the plaintiff move the court for additional security on the part of the plaintiff; and if on such motion the court is satisfied that the surety has removed from this state or is not sufficient the action may be dismissed, unless in a reasonable time to be fixed by the court sufficient surety is given by the plaintiff. § 401, C. Civ. P.

§ 5602. **Judgment against surety.** After final judgment has been rendered in an action in which security for costs has been given as required by this chapter the court on motion of the defendant, or any other person having a right to such costs or any part thereof after ten days' notice of such motion may enter up judgment in the name of the defendant or his legal representatives against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment as in other cases for the use and benefit of the person entitled to such costs. § 402, C. Civ. P.

CHAPTER 14.

OF APPEALS IN CIVIL ACTIONS.

§ 5603. **Appeals to supreme court.** A judgment or order in a civil action or in a special proceeding in any of the district courts may be removed to the supreme court by appeal as provided in this chapter and not otherwise. § 1, c. 120, 1891.

§ 5604. **Title to action unchanged.** The party appealing is known as the appellant and the adverse party as the respondent, but the title of the action is not to be changed in consequence of the appeal. § 2, c. 120, 1891.

§ 5605. **Time for appeal.** An appeal from a judgment may be taken within one year after the entry thereof by default, or after written notice of the entry thereof in case the party against whom it is entered has appeared in the action, and from an order within sixty § 3, c. 120, 1891.
§ 1, c. 81, 1893.
am'd.

days after written notice of the same shall have been given to the party appealing; provided, that in all actions heretofore or hereafter tried, when the appeal from an order is based upon errors assigned or set out in a statement of the case submitted to the court or judge thereof for settlement within sixty days after the service of such written notice and at least eight days prior to the expiration of such time and such court or judge neglects to settle such statement within the said sixty days, the party appealing shall have thirty days after such statement shall have been settled in which to take an appeal.

CODE 3, c. 20, 1887.
4, c. 120, 1891.
am'd.

§ 5606. How appeal taken. An appeal must be taken by serving a notice in writing signed by the appellant or his attorney on the adverse party and filing the same in the office of the clerk of the court in which the judgment or order appealed from is entered, stating the appeal from the same, and whether the appeal is from the whole or a part thereof and if from a part only, specifying the part appealed from. The appeal shall be deemed taken by the service of a notice of the appeal and perfected on service of the undertaking for costs, or the deposit of money instead, or the waiver thereof as hereinafter prescribed. When service of a notice of appeal and undertaking cannot in any case be made within this state the court may prescribe a mode for serving the same.

CODE 4, c. 20, 1887.
5, c. 120, 1891.
am'd.

§ 5607. Clerk to transmit papers. Upon an appeal being perfected the clerk of the court from which the appeal is taken shall at the expense of the appellant forthwith transmit to the supreme court, if the appeal is from a judgment, the judgment roll; if the appeal is from an order, he shall transmit the order appealed from and the original papers used by each party on the application for such order. The court may, however, in case of either judgment or order upon motion of either party after notice to the adverse party for good cause shown, direct copies to be transmitted instead of the originals. The clerk shall also in all cases transmit to the supreme court the original notice of appeal and the undertaking given thereon; and he shall annex to the papers so transmitted a certificate under his hand and the seal of the court from which the appeal is taken, certifying that they are the original papers or copies as the case may be, and that they are transmitted to the supreme court pursuant to such appeal. No further certificate or attestation shall be necessary; provided, that if the appellant does not within thirty days after his appeal is perfected cause a proper record in the case to be transmitted to the supreme court by the clerk of the district court, the respondent may cause such record to be transmitted by the clerk of the district court to the clerk of the supreme court; and in such case the respondent may recover the expense thereof as costs on such appeal in case the judgment or order appealed from is in whole or in part affirmed.

CODE 5, c. 20, 1887.
6, c. 120, 1891.

§ 5608. Deposit for undertaking. Waiver of. When the appellant is required under any provision of this chapter to give an undertaking he may in lieu thereof deposit with the clerk of court in which the judgment or order appealed from is entered, who shall give him a receipt therefor, a sum of money equal to the amount for which such undertaking is required to be given and in lieu of the service of such undertaking serve a notice of the making of such deposit. Such deposit and notice shall have the same effect as the service of the required undertaking and be held to answer the event of the appeal upon the terms prescribed for the undertaking in lieu of which

the same is deposited. Any such undertaking and deposit may be waived in writing by the respondent for whose benefit the same is required to be made and such waiver shall have the same effect as the giving of the undertaking would have had.

§ 5609. **Appeal ineffectual without undertaking.** To render an appeal effectual for any purpose an undertaking must be executed on the part of the appellant by at least two sureties to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal not exceeding two hundred and fifty dollars.

§ 6, c. 20, 1887.
§ 1, c. 26, 1887.
§ 7, c. 120, 1891.

§ 5610. **Execution not stayed without undertaking.** If the appeal is from a judgment directing the payment of money, it shall not stay the execution of the judgment unless an undertaking is executed on the part of the appellant by at least two sureties to the effect that if the judgment appealed from, or any part thereof, is affirmed the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it is affirmed only in part, and all damages, which shall be awarded against the appellant on appeal.

§ 7, c. 20, 1887.
§ 8, c. 120, 1891.

§ 5611. **Undertaking to stay judgment for delivery of personalty.** If the judgment appealed from directs the assignment or delivery of documents or personal property the execution of the judgment shall not be delayed by the appeal, unless the things required to be assigned or delivered are brought into court or placed in the custody of such officer or receiver as the court or presiding judge shall appoint, or unless an undertaking is entered into on the part of the appellant by at least two sureties in such sum as the court or presiding judge thereof shall direct to the effect that the appellant will obey the order of the appellate court on the appeal.

§ 8, c. 20, 1887.
§ 9, c. 120, 1891.

§ 5612. **To stay execution of conveyance.** If the judgment appealed from directs the execution of a conveyance or other instrument the execution of the judgment shall not be stayed by the appeal, unless the instrument shall have been executed and deposited with the clerk with whom the judgment was entered to abide the judgment of the appellate court.

§ 9, c. 20, 1887.
§ 10, c. 120, 1891.

§ 5613. **Of judgment to sell and deliver realty.** If the judgment appealed from directs the sale or delivery of possession of real property, except in actions for foreclosure of mortgages, the execution of the same shall not be stayed, unless an undertaking is executed on the part of the appellant by at least two sureties in such sum as the court or presiding judge thereof shall direct to the effect that during the possession of such property by the appellant he will not commit nor suffer to be committed any waste thereon and that if the judgment is affirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof pursuant to the judgment.

§ 10, c. 20, 1887.
§ 11, c. 120, 1891.

§ 5614. **To stay mortgage sale.** If the judgment appealed from directs the sale of mortgaged premises, the execution thereof shall not be stayed by the appeal, unless an undertaking is executed on the part of the appellant by at least two sureties, conditioned for the payment of any deficiency which may arise on such sale, not exceeding such sum as shall be fixed by the court or presiding judge thereof; to be specified in the undertaking, and all costs and damages which may be awarded to the respondent on such appeal.

§ 11, c. 20, 1887.
§ 12, c. 120, 1891.

12, c. 20, 1887.
13, c. 120, 1891.

§ 5615. **Abatement of nuisance.** If the judgment appealed from directs the abatement or restraint of the continuance of a nuisance, either public or private, the execution of the judgment shall not be stayed by the appeal, unless an undertaking is entered into on the part of the appellant by at least two sureties in such sum as the court or presiding judge thereof shall direct to the effect that the appellant will pay all damages which the opposite party may sustain by the continuance of such nuisance.

13, c. 20, 1887.
14, c. 120, 1891.

§ 5616. **Other judgments.** If the judgment appealed from directs the doing of any particular act or thing and no express provision is made by statute in regard to the undertaking to be given on appeal therefrom, the execution thereof shall not be stayed by the appeal therefrom, unless an undertaking is entered into on the part of the appellant in such sum as the court or presiding judge thereof shall direct and by at least two sureties to the effect that the appellant will pay all damages which the opposite party may have sustained by not doing the particular thing or act directed to be done by the judgment appealed from and to such further effect as such court or judge shall in discretion direct.

14, c. 20, 1887.
15, c. 120, 1891.
am'd.

§ 5617. **Intermediate orders.** When the appeal is from an order the execution or performance thereof shall not be delayed, except upon compliance with such conditions as the court or presiding judge thereof shall direct and, when so required, an undertaking shall be executed on the part of the appellant by at least two sureties in such sums and to such effect as the court or presiding judge thereof shall direct; such effect shall be directed in accordance with the nature of the order appealed from, corresponding to the foregoing provisions in respect to appeals from judgments, when applicable and such provision shall be made in all cases as will properly protect the respondent and no appeal from an intermediate order before judgment shall stay proceedings unless the court or presiding judge thereof shall in his discretion so specially order.

15, c. 20, 1887.
16, c. 120, 1891.

§ 5618. **Undertaking on orders as to provisional remedies.** When a party shall give immediate notice of appeal from an order vacating or modifying a writ of attachment or from an order denying, dissolving or modifying an injunction he may within six days thereafter serve an undertaking executed on his part by at least two sureties in such sum as the court or presiding judge thereof shall direct to the effect that, if the order appealed from or any part thereof is affirmed, the appellant will pay all costs and damages which may be awarded against him on appeal and all which the adverse party may sustain by reason of the continuance of the attachment or the granting or continuance of the injunction as the case may be. Upon the giving of such undertaking such court or judge shall order the attachment to be continued and in his discretion may order the injunction asked to be allowed or that before granted to be continued until the decision of the appeal, unless the respondent shall at any time pending the appeal give an undertaking with sufficient surety in a sum to be fixed by the court or presiding judge to abide and perform any final judgment that shall be rendered in favor of the appellant in the action, but may at any time subsequently vacate such order if the appeal is not diligently prosecuted.

16, c. 20, 1887.
17, c. 120, 1891.

§ 5619. **From whom undertaking not required.** When the state, or any state officer, or state board, in a purely official capacity, or any municipal corporation within the state shall take an

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

§ 5620. When new undertaking required. The supreme court upon satisfactory proof, that any of the sureties to an undertaking given under this chapter has become insolvent or that his circumstances have become so precarious that there is reason to apprehend that the undertaking is insufficient security, may in its discretion require the appellant to file and serve a new undertaking with such sureties and in such time as shall be prescribed, and that in default thereof the appeal shall be dismissed or the stay of proceedings vacated and the execution or performance of the judgment or order be allowed to be enforced without further delay. § 17, c. 20, 1887.
§ 18, c. 120, 1891.

§ 5621. In one instrument or several. Refusal to stay. The undertakings required by this chapter may be in one instrument or several at the option of the appellant; the original must be filed with a notice of the appeal and a copy showing the residence of the sureties must be served with the notice of appeal. When the sum or effect of any undertaking is required under the foregoing provisions to be fixed by the court or judge at least twenty-four hour's notice of the application therefor shall be given the adverse party. When the court or the judge thereof from which the appeal is taken or desired to be taken shall neglect or refuse to make any order or direction not wholly discretionary, necessary to enable the appellant to stay proceedings upon an appeal, the supreme court, or one of the justices thereof, shall make such order or direction. § 18, c. 20, 1887.
§ 19, c. 120, 1891.

§ 5622. Sureties must justify. An undertaking upon an appeal shall be of no effect, unless it is accompanied by the affidavit of the sureties in which each surety shall state that he is worth a certain sum mentioned in such affidavit over and above all his debts and liabilities in property within this state not by law exempt from execution, and which sum so sworn to by such sureties shall in the aggregate be double the amount specified in said undertaking. The respondent may, however, except to the sufficiency of the sureties within ten days after such notice of the appeal and unless they or other sureties justify in the same manner as bail upon an arrest within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than five days. § 19, c. 20, 1887.
§ 20, c. 120, 1891.

§ 5623. Effect of perfected appeal. Perishable property. Whenever an appeal shall have been perfected and the proper undertaking given or other act done prescribed by this chapter to stay the execution or performance of the judgment or order appealed from, all further proceedings thereon shall be thereby stayed accordingly, except that the court below may proceed upon any other matter included in the action not affected by the judgment or order appealed from and except that the court or the presiding judge thereof may order perishable property held under the judgment or order appealed from to be sold and the proceeds paid into the court to abide the event. § 20, c. 20, 1887.
§ 20, c. 120, 1891.

§ 5624. Reference to ascertain damages. Breach of undertaking. When the amount of damages to be paid by the § 21, c. 20, 1887.
§ 22, c. 120, 1891.

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

§ 22, c. 20, 1887.
§ 23, c. 120, 1891.

§ 5625. Amendment of appeals. When a party shall in good faith give notice of appeal and shall omit through mistake or accident to do any other act necessary to perfect the appeal to make it effectual or to stay proceedings, the court from which the appeal is taken or the presiding judge thereof or the supreme court, or any one of the justices thereof, may permit an amendment or the proper act to be done on such terms as may be just.

§ 23, c. 20, 1887.
§ 24, c. 120, 1891.
§ 1, c. 83, 1893.

§ 5626. What orders reviewable. The following orders when made by the court may be carried to the supreme court:

1. An order affecting a substantial right made in any action when such order in effect determines the action and prevents a judgment from which an appeal might be taken.
2. A final order affecting a substantial right made in special proceedings or upon a summary application in an action after judgment.
3. When an order grants, refuses, continues or modifies a provisional remedy or grants, refuses, modifies or dissolves an injunction: when it sets aside or dismisses a writ of attachment for irregularity; when it grants or refuses a new trial or when it sustains or overrules a demurrer.
4. When it involves the merits of an action or some part thereof; when it orders judgment on application therefor on account of the frivolousness of a demurrer, answer or reply; or strikes off such demurrer, answer or reply on account of the frivolousness thereof.
5. Orders made by the district court or judge thereof without notice are not appealable; but orders made by the district court after a hearing is had upon notice which vacate or refuse to set aside orders previously made without notice may be appealed to the supreme court when by the provisions of this chapter an appeal might have been taken from such order so made without notice, had the same been made upon notice.

§ 24, c. 20, 1887.
§ 25, c. 120, 1891.
§ 1, c. 121, 1891.
am'd.

§ 5627. Appeal without motion for new trial. Upon an appeal from a judgment the supreme court may review any intermediate order or determination of the court below, which involves the merits and necessarily affects the judgment, appearing upon the record transmitted or returned from the district court, whether the

same is excepted to or not; nor shall it be necessary in any case to take any exceptions or settle a statement of the case to enable the supreme court to review any alleged error which would without a statement appear upon the face of the record. Any question of fact or law decided upon trials by the court or by a referee and appearing upon the record properly excepted to in a case in which an exception is necessary may be reviewed by the supreme court, whether a motion for a new trial was or was not made in the court below, but questions of fact shall not be reviewed in the supreme court in cases tried before a jury, unless a motion for a new trial is first made in the court below.

§ 5628. Power of court. Rehearing. What clerk transmits. Upon an appeal from a judgment or order the supreme court may reverse, affirm or modify the judgment or order and as to any and all of the parties; and may, if necessary or proper, order a new trial and if the appeal is from a part of the judgment or order may reverse, affirm or modify it as to the part appealed from. In all cases the supreme court shall remit its judgment or decision to the court from which the appeal was taken to be enforced accordingly; and if from a judgment, final judgment shall thereupon be entered in the court below in accordance therewith, except when otherwise ordered. The clerk of the supreme court shall remit to such court the papers transmitted to the supreme court on the appeal together with the judgment or decision of the supreme court thereon within sixty days after the same shall have been made, unless the supreme court on application of either of the parties shall direct them to be retained for the purpose of enabling such parties to move for a rehearing. In case such motion for a rehearing is denied the papers shall be remitted within twenty days after such denial. The clerk of the supreme court shall in all cases, except when the order or judgment is affirmed also transmit with the papers so returned by him a certified copy of the opinion of the supreme court and his fees for such copy shall be taxed and allowed with his other fees in the case.

§ 25, c. 20, 1887.
§ 26, c. 120, 1891

§ 5629. When new trial ordered. Time limited. In every case on appeal in which the supreme court shall order a new trial or further proceedings in the court below the record shall be transmitted to such court and proceedings had therein within one year from the date of such order in the supreme court, or in default thereof the action shall be dismissed, unless upon good cause shown the court shall otherwise order.

§ 26, c. 20, 1887.
§ 27, c. 120, 1891.

§ 5630. Appeals in cases tried without jury. In all actions tried by the district court without a jury in which an issue of fact has been joined all the evidence offered on the trial shall be received. All testimony which either party desires to offer, or any part thereof, may at his option be taken by deposition. In any trial under the provisions of this section either party may have his objection to any evidence noted as the evidence is offered. Any objections so made may be preserved in the statement of the case herein provided for and reviewed in the supreme court upon appeal; but if no objection is made to the introduction of testimony offered on the trial, no objection to its consideration can be urged upon its review upon appeal in the supreme court. For the purpose of reviewing upon appeal questions as to the sufficiency of the evidence to sustain the findings of fact in any action tried under the provisions of this section a statement of the case may be prepared and settled within

§ 1, c. 82, 1893.
am'd.

the time and in the manner provided in article 8 of chapter 10 of this code, which statement shall contain in a narrative form without unnecessary repetition all the evidence offered at the trial. The supreme court shall try the case anew and render final judgment therein according to the justice of the case.

§ 5631. When printed abstracts not required. In civil actions appealed to the supreme court in which the amount of the judgment appealed from, exclusive of costs, does not exceed two hundred dollars no printed abstracts or briefs shall be required of either party; but in case printed copies of the same are not furnished three typewritten copies thereof shall be filed with the clerk of the supreme court at such time as may be required by law or the rules of such court.

§ 1. c. 107, 1895.

§ 5632. When appeals heard. Unless continued for cause all civil cases appealed to the supreme court shall be heard at the next succeeding term of court in either of the cases following:

1. When the appeal is taken sixty days before the first day of the term.

2. When by either party a printed abstract and a printed brief are served twenty-five days before the first day of the term.

CHAPTER 15.

PROCEEDINGS AGAINST JOINT DEBTORS, HEIRS, DEVISEES, LEGATEES AND TENANTS HOLDING UNDER A JUDGMENT DEBTOR.

§ 426, C. Civ. P.

§ 5633. Summons after judgment. When a judgment shall be recovered against one or more of several persons jointly indebted upon a contract by proceeding as provided in section 5261, those who were not originally summoned to answer the complaint and did not appear in the action may be summoned to show cause why they should not be bound by the judgment in the same manner as if they had been originally summoned.

§ 427, C. Civ. P.

§ 5634. Requisites of. The summons provided in the preceding section must be subscribed by the judgment creditor or his attorney, must describe the judgment and require the person summoned to show cause within thirty days after the service of the summons and must be served in like manner as the original summons. It is not necessary to file a new complaint.

§ 428, C. Civ. P.

§ 5635. Accompanied by affidavit. The summons must be accompanied by an affidavit of the person subscribing it, that the judgment has not been satisfied to his knowledge or information and belief and must specify the amount due thereon.

§ 429, C. Civ. P.

§ 5636. Answer. Upon such summons the party summoned may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently; and he may make the same defense which he might have originally made to the action, except the statute of limitations.

§ 5637. **Further pleadings.** The party issuing the summons may demur or reply to the answer and the party summoned may demur to the reply; and the issues may be tried and judgment may be given in the same manner as in an action and enforced by execution; or, the application of the property charged to the payment of the judgment may be compelled by proceedings under chapter 34 if necessary. § 430, C. Civ. P. am'd.

§ 5638. **Pleadings verified.** The answer and reply must be verified in the like cases and manner and be subject to the same rules as the answer and reply in an action. § 431, C. Civ. P.

CHAPTER 16.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF THE ACTION.

§ 5639. **Judgment offered. Effect.** The defendant may at any time before the trial or verdict serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum or property or to the effect therein specified with costs. If the plaintiff accepts the offer and gives notice thereof in writing within ten days, he may file the summons, complaint and offer with an affidavit of notice of acceptance and the court or judge thereof must thereupon order judgment accordingly. If the notice of acceptance is not given the offer is to be deemed withdrawn and cannot be given in evidence; and if the plaintiff fails to obtain a more favorable judgment he cannot recover costs, but must pay the defendant's costs from the time of the offer. § 432, C. Civ. P.

§ 5640. **Same on counterclaim.** If the defendant sets up a counterclaim in his answer to an amount greater than the plaintiff's claim or sufficient to reduce the plaintiff's recovery below fifty dollars, then the plaintiff may serve upon the defendant an offer in writing to allow judgment to be taken against him for the amount specified, or to allow said counterclaim to the amount specified with costs. If the defendant accepts the offer and gives notice thereof in writing within ten days, he may enter judgment as above for the amount specified, if the offer entitles him to judgment, or the amount specified in said offer shall be allowed him in the trial of the action. If notice of acceptance is not given the offer is deemed to be withdrawn and cannot be given in evidence and if the defendant fails to recover a more favorable judgment, or to establish his counterclaim for a greater amount than is specified in said offer, he cannot recover costs, but must pay plaintiff's costs from the time of the offer. § 433, C. Civ. P.

§ 5641. **Offer of fixed damages.** In an action arising on contract the defendant may with his answer serve upon the plaintiff an offer in writing, that if he fails in his defense the damages be assessed at a special sum; and if the plaintiff signifies his acceptance thereof in writing with or before the notice of trial and on the trial has a verdict, the damages must be assessed accordingly. § 434, C. Civ. P.

§ 435, C. Civ. P.

§ 5642. Plaintiff refusing. Proof. Costs. If the plaintiff does not accept the offer, he must prove his damages as if it had not been made and shall not be permitted to give it in evidence. And if the damages in his favor do not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in consequence of any necessary preparations or defense in respect to the question of damages.

CHAPTER 17.

ADMISSION OR INSPECTION OF WRITINGS.

§ 436, C. Civ. P.

§ 5643. Admission of genuineness. Refusal. Costs. Either party may exhibit to the other or to his attorney at any time before the trial any paper, material to the action, and request an admission in writing of its genuineness. If the adverse party or his attorney fails to give the admission within four days after the request and if the party exhibiting the paper is afterwards put to costs in order to prove its genuineness and the same is finally proved or admitted on the trial, such costs must be paid by the party refusing the admission, unless it appears to the satisfaction of the court that there were good reasons for the refusal.

§ 437, C. Civ. P.

§ 5644. Copy of documents required. Penalty. The court before which an action is pending, or a judge thereof, may in its or his discretion and upon due notice order either party to give to the other within a specified time an inspection and copy, or permission to take a copy of any books, papers and documents in his possession or under his control, containing evidence relating to the merits of the action or the defense therein. If compliance with the order is refused, the court may on motion exclude the paper from being given in evidence, or punish the party refusing, or both.

CHAPTER 18.

EXAMINATION OF PARTIES.

§ 438, C. Civ. P.

§ 5645. Action for discovery. No action to obtain discovery under oath in aid of the prosecution or defense of another action shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner prescribed by this chapter.

§ 438, C. Civ. P.
am'd.

§ 5646. Adversary as witness. A party to an action, or in case a corporation is a party, the president, secretary or other principal officer or general managing agent of such corporation, may be examined as a witness at the instance of an adverse party or any of several adverse parties and for that purpose may be compelled in the

same manner and subject to the same rules of examination as any other witness to testify either at the trial, or conditionally, or upon commission.

§ 5647. **Examination before trial.** The examination instead of being had at the trial as provided in the last section may be had at any time before the trial at the option of the party claiming it before a judge of the court on a previous notice to the party to be examined and any other adverse party of at least five days, unless for good cause shown the judge orders otherwise. But the party to be examined shall not be compelled to attend in any other county than that of his residence or where he may be served with a subpoena for his attendance. § 440, C. Civ. P. am'd.

§ 5648. **Attendance compelled. Examination filed.** The party to be examined as in the last section provided may be compelled to attend in the manner provided in article 2 of chapter 19; and the examination shall be taken and filed with the clerk and may be read by either party on the trial. § 441, C. Civ. P. am'd.

§ 5649. **Rebuttal.** The examination of the party thus taken may be rebutted by adverse testimony. § 442, C. Civ. P.

§ 5650. **Refusal punished as contempt.** If a party refuses to attend and testify as in the last four sections provided, he may be punished as for a contempt and his complaint, answer or reply may be stricken out. § 443, C. Civ. P.

§ 5651. **Party examined on his own behalf.** A party examined by an adverse party as in this chapter provided may be examined on his own behalf, subject to the same rules of examination as other witnesses. § 444, C. Civ. P.

§ 5652. **Beneficiary examined.** A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner and subject to the same rules of examination as if he was named as a party. § 445, C. Civ. P.

CHAPTER 19.

WITNESSES AND EVIDENCE.

ARTICLE 1.—WHO MAY BE EXCLUDED.

§ 5653. **Who not excluded. Husband and wife. Decedent's statement.** No person offered as a witness in any action or proceeding in any court, or before any officer or person having authority to examine witnesses or hear evidence, shall be excluded or excused by reason of such person's interest in the event of the action or proceeding; or because such person is a party thereto, or because such person is the husband or wife of a party thereto, or of any person in whose behalf such action or proceeding is commenced, prosecuted, opposed or defended, except as hereinafter provided: § 446, C. Civ. P. § 1, c. 17, 1879. am'd.

1. A husband cannot be examined for or against his wife without her consent, nor a wife, for or against her husband without his consent, nor can either during the marriage or afterwards be, without the

consent of the other, examined as to any communication made by one to the other during the marriage; but this subdivision does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. In civil actions or proceedings by or against executors, administrators, heirs at law or next of kin in which judgment may be rendered or order entered for or against them, neither party shall be allowed to testify against the other as to any transaction whatever with or statement by the testator or intestate, unless called to testify thereto by the opposite party. But if the testimony of a party to the action or proceeding has been taken and he shall afterwards die and after his death the testimony so taken shall be used upon any trial or hearing in behalf of his executors, administrators, heirs at law or next of kin, then the other party shall be a competent witness as to any and all matters to which the testimony so taken relates.

ARTICLE 2.—MEANS OF PRODUCING WITNESSES.

- § 5654. **Subpœnas issued by whom.** Clerks of the supreme and district courts, the judges thereof, notaries public, justices of the peace and referees shall on the application of any person having a cause or any matter pending in court or before any such officer or tribunal issue a subpœna for witnesses inserting all the names required by the applicant in one subpœna, which may be served by any person, not interested in the action, or by the sheriff, coroner or constable; but when served by any person, other than a public officer, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed, except when served by an officer.
- § 5655. **Requisites of.** The subpœna shall be directed to the person therein named, requiring him to attend at a particular time and place to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing or other thing under his control, which he is bound by law to produce as evidence.
- § 5656. **For depositions.** When the attendance of the witness before any officer authorized to take depositions is required, the subpœna may be issued by such officer.
- § 5657. **How served.** The subpœna shall be served either by reading or by copy delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness.
- § 5658. **Witness not compelled to attend out of county.** A witness shall not be obliged to attend for examination on the trial of a civil action except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpœna is served upon him.
- § 5659. **Demand of fees in advance.** A witness may demand his traveling fees and fee for one day's attendance when the subpœna is served upon him and if the same is not paid the witness shall not be obliged to obey the subpœna. The fact of such demand and non-payment shall be stated in the return.
- § 5660. **Examination of prisoner.** Any court may by order require an officer having the custody of any person confined in any prison in this state to produce such person before him for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition.

§ 5661. **Prisoner remains in custody.** While a prisoner's deposition is being taken he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition. § 459, C. Civ. P.

§ 5662. **Witness exempt from suit out of his county.** A witness shall not be liable to be sued in the county in which he does not reside by being served with a summons in such county while going, returning or attending in obedience to a subpoena. § 460, C. Civ. P.

§ 5663. **Demand fees daily.** At the commencement of each day after the first day a witness may demand his fees for that day's attendance in obedience to a subpoena and if the same are not paid he shall not be required to remain. § 461, C. Civ. P.

§ 5664. **Oath of witness.** Before testifying the witness must be sworn to testify as follows: § 462, C. Civ. P.

"You do solemnly swear that the evidence you shall give relative to the matter in difference now in hearing between, plaintiff and, defendant, shall be the truth, the whole truth and nothing but the truth. So help you God."

Any witness who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "so help you God," at the end of the oath the following: "This you do affirm under the pains and penalties of perjury."

ARTICLE 3.—MODE OF TAKING THE TESTIMONY OF WITNESSES.

§ 5665. **Three modes.** The testimony of witnesses is taken in three modes: § 463, C. Civ. P.

1. By affidavit.
2. By deposition.
3. By oral examination.

§ 5666. **Affidavit.** An affidavit is a written declaration under oath made without notice to the adverse party. § 464, C. Civ. P.

§ 5667. **Deposition.** A deposition is a written declaration under oath made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. § 465, C. Civ. P.

§ 5668. **Oral examination.** An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness. § 466, C. Civ. P.

ARTICLE 4.—AFFIDAVIT.

§ 5669. **Use of.** An affidavit may be used to verify a pleading, to prove the service of a summons, notice or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings or upon a motion and in any other case permitted by law. § 467, C. Civ. P.

§ 5670. **Where and how made.** An affidavit may be made in and out of this state before any person authorized to administer an oath. § 468, C. Civ. P.
§ 1, c. 2, 1885.

ARTICLE 5. — DEPOSITIONS.

§ 469, C. Civ. P. § 5671. **Cases when deposition used.** The deposition of any witness may be used only in the following cases:

1. When the witness does not reside in the county where the action or proceeding is pending or is sent for trial by change of venue, or is absent therefrom.

2. When from age, infirmity or imprisonment the witness is unable to attend court or is dead.

3. When the testimony is required upon a motion or in any other case when the oral examination of the witness is not required.

§ 470, C. Civ. P. § 5672. **When taking commenced.** Either party may commence taking testimony by depositions at any time after service upon am'd. or the appearance of the defendant in the action.

ARTICLE 6. — OFFICERS WHO MAY TAKE DEPOSITIONS.

§ 471, C. Civ. P. § 5673. **Before whom in state.** Depositions may be taken in 6876 1, c. 42, 1883. this state before a judge or clerk of the supreme court or district court, or before a justice of the peace, notary public, United States circuit or district court commissioner or any person empowered by a special commission.

§ 472, C. Civ. P. § 5674. **Before whom out of state.** Depositions may be taken out of the state by a judge, justice or chancellor or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this state to take depositions or any person authorized by a special commission from any court of this state.

§ 473, C. Civ. P. § 5675. **Ineligibility of officer.** The officer before whom depositions are taken must not be a relative or attorney of either party or otherwise interested in the event of the action or proceeding.

§ 474, C. Civ. P. § 5676. **Commission to take depositions.** Any court of am'd. record of this state, or any judge thereof, is authorized to grant a commission to take depositions within or without the state upon the application of either party upon five days' notice to the other. The commission must be issued to a person or persons therein named by the clerk under the seal of the court granting the same. Depositions under it must be taken upon written interrogatories, direct and cross, which shall be attached to the commission by the clerk issuing the same. Unless the parties agree as to the form of the interrogatories, the same shall be presented to the court or judge granting the commission for settlement upon five days' notice, at which time the court or judge shall settle the same.

ARTICLE 7. — MANNER OF TAKING AND AUTHENTICATING DEPOSITIONS.

§ 475, C. Civ. P. § 5677. **Notice to adverse party. Contents.** Prior to the am'd. taking of any deposition, unless the same is taken under a commission, a written notice entitled in the action or proceeding in which it is to be used, and specifying the time and place of taking the same shall be served upon the adverse party. The notice shall be served a

sufficient time before the day specified therein to allow the adverse party time to attend by the usual route of travel and one day for preparation, exclusive of Sundays and the day of service. The examination may be adjourned from day to day.

§ 5678. When taken without notice. When the summons in an action has been served upon all of the defendants therein in the manner provided by law, and the time allowed such defendants to answer has expired and they have in no way appeared in such action, the plaintiff may take the deposition of any witness without notice to such defendant and such deposition may be introduced in evidence in the action and shall have the same force and effect as a deposition taken upon notice.

§ 5679. Notice by publication. When the party against whom the deposition is to be read is absent from or is not a resident of the state and has no agent or attorney therein upon whom service may be made, notice of the taking of a deposition may be served upon him by publishing the same three times, once in each week for three successive weeks in some newspaper printed in the county where the action or proceeding is pending, if one is printed in such county; and if not, in some newspaper printed at the seat of government of this state. Personal service of the notice on the defendant out of the state shall be equivalent to such publication.

§ 476, C. Civ. P.
am'd.

§ 5680. Written and subscribed. The deposition must be written by the officer, or in his presence by the witness, or some disinterested person; and must be subscribed by the witness.

§ 477, C. Civ. P.

§ 5681. How returned. Opening. A deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same and by him addressed and transmitted to the clerk of the district court of the county in which the action or proceeding is pending, if the same is pending in the district court; otherwise to the court, officer or tribunal in which the action or proceeding is pending. It shall remain under seal until opened by order of the court, officer or tribunal or at the request of a party to the action or proceeding, or his attorney.

§ 478, C. Civ. P.
am'd.

§ 5682. How far may be used. When a deposition has once been taken it may be read in any stage of the same action or proceeding, or in any other action or proceeding upon the same matter between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this chapter. A deposition shall be deemed the evidence of the party reading it.

§ 479, C. Civ. P.

§ 5683. How authenticated. Depositions taken pursuant to this chapter by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this state or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal and no other or further act or authentication shall be required. If the officer taking the same has no official seal the deposition, if not taken in this state, shall be certified and signed by such officer and shall be further authenticated, either by parol proof adduced in court or by the official certificate and seal of any secretary or other officer of the state, keeping the great seal thereof, or of a clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same within the meaning of this chapter authorized to take the same. But if the deposition is taken within or without this state

§ 480, C. Civ. P.

under a special commission it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

§ 5684. **Certificate to deposition.** The officer taking the deposition shall annex thereto a certificate showing the following facts:

1. That the witness was first sworn to testify the truth, the whole truth and nothing but the truth.
2. That the deposition was reduced to writing by some proper person, naming him.
3. That the deposition was written and subscribed in the presence of the officer certifying thereto.
4. That the deposition was taken at the time and place specified in the notice.

§ 5685. **What shown before reading.** When a deposition is offered to be read in evidence it must appear to the satisfaction of the court that for some cause specified in section 5671 of this code the attendance of the witness cannot be procured.

§ 5686. **When filed.** Every deposition intended to be read in evidence on the trial must be filed at least one day before the trial.

ARTICLE 8.—EXCEPTIONS TO DEPOSITIONS.

§§ 484, 485, C. Civ. P. am'd. § 5687. **How and when exceptions taken.** Exceptions to a deposition on the ground of incompetency or irrelevancy may be made at the time the same is offered in evidence; other exceptions to a deposition must be made in writing, specifying the grounds of objections and filed in the cause before the commencement of the trial.

§ 486, C. Civ. P. § 5688. **When questions on heard.** The court shall on motion of either party hear and decide the questions arising on exceptions to depositions before the commencement of the trial.

§ 487, C. Civ. P. § 5689. **How errors waived.** Errors of the court in its decisions upon exceptions to depositions are waived unless excepted to.

ARTICLE 9.—OF PUBLIC DOCUMENTS, RECORDS, ETC.

§ 488, C. Civ. P. am'd. § 5690. **Statutes, codes, decisions, when admissible as evidence.** Books purporting to be printed or published under the authority of any other state, territory or foreign country and purporting to contain the statutes, codes or other written law of such state, territory or country, or proved to be commonly admitted in the tribunals of such state, territory or country as evidence of the written law thereof, are admissible in this state as evidence of such law. The unwritten or common law of any other state, territory or country may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

§ 489, C. Civ. P. am'd. § 5691. **Copies of judicial records.** Copies of the records and judicial proceedings of any court of the United States, or of any state or territory of the United States shall be admissible as evidence in this state, when attested by the clerk with the seal of the court annexed, if there is a seal, together with a certificate of the judge, chief justice or presiding magistrate that the attestation is in due form, and the said records and judicial proceedings so authenticated

shall have such faith and credit given to them in every court within this state as they have by law or usage in the courts of the United States or of the state or territory from which they are taken.

§ 5692. **Same of foreign countries.** A judicial record of a foreign country may be proved by the attestation of the clerk with the seal of the court annexed, if there is a clerk and seal, or of the legal keeper of the record with the seal of his office annexed, if there is a seal, together with the certificate of the chief judge or presiding magistrate that the person making the attestation is the clerk of the court, or the legal keeper of the record, and in either case, that the signature of such person is genuine and that the attestation is in due form. The signature of the chief judge or presiding magistrate must be authenticated by the certificate of the minister, ambassador or a consul, vice consul or consular agent of the United States in such foreign country.

§ 5693. **How proof of publication made.** Proof of the publication of a document or notice required by law or by an order of the court or judge to be published in a newspaper may be made by the affidavit of the publisher or printer of the newspaper, or his foreman, clerk or bookkeeper, annexed to a copy of the document or notice, specifying the paper in which and the times when the publication was made.

§ 490, C. Civ. P.
am'd.

§ 5694. **Transcript of justice's record.** A transcript of the docket record of a justice of the peace in an action or proceeding, when certified by such justice or his successor in office, shall be evidence to prove the facts contained in such transcript in any action or other proceeding in the county or subdivision wherein such record was made.

§ 491, C. Civ. P.
am'd.

§ 5695. **How used in another county.** Such transcript may be read in evidence in another county or subdivision, when there shall be attached thereto a certificate of the clerk of the district court of the county or subdivision in which such record was made under the seal of the court, to the effect that the person subscribing such transcript was at the date thereof a justice of the peace of the county; and also if the judgment was rendered by another, that such other was at the time of the making of the same a justice of the peace of the county.

§ 492, C. Civ. P.
am'd.

§ 5696. **Acknowledged instruments, when record evidence.** Every instrument conveying or affecting real property acknowledged, or proved and certified as provided in the civil code may together with the certificate of acknowledgment or proof be read in evidence in an action or proceeding without further proof; the record of such instrument, or a duly authenticated copy of the record, may also be read in evidence with the like effect as the original on proof by affidavit or otherwise that the original is not in the possession or under the control of the party producing such record or copy.

§§ 493, 494, C.
Civ. P.
am'd.

§ 5697. **Entries by public officers.** Entries in public or other official books or records, made in the performance of his duty by a public officer of this state, or by another person in the performance of a duty specially enjoined by law are prima facie evidence of the facts stated therein.

§ 495, C. Civ. P.

§ 5698. **Same.** An entry made by an officer, or board of officers, or under the direction and in the presence of either in the course of official duty is prima facie evidence of the facts stated in such entry.

§ 496, C. Civ. P.

§ 5699. How official documents proved. Official documents may be proved as follows:

1. The acts of the executive of this state, by a copy of the records of the state department thereof, and of the United States, by a copy of the records of the state department thereof, certified by the heads of those departments respectively. They may also be proved by publications thereof printed by order of the legislative assembly or congress, or either house thereof.

2. The proceedings of the legislative assembly of this state or of congress, by the journals of those bodies respectively, or either house thereof, or by copies printed by their order or certified by the clerk.

3. The acts of the executive or the proceedings of the legislature of a sister state, in the same manner.

4. The acts of the executive or the proceedings of the legislature of a foreign country, by publications purporting to be made by their authority and to contain a record of such acts, or commonly received in that country as such, or by a copy of the official record of such act certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the executive of the United States.

5. Acts of a municipal corporation of this state, or of a board or department thereof, by a copy of the official record of such acts, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such corporation and to contain a record of such acts.

6. Documents of any other class in this state by the original or by a copy, certified by the legal keeper thereof.

7. Documents of any other class in a sister state, by the original or by a copy, certified by the legal keeper thereof together with the certificate of the secretary of state, judge of the supreme, superior or county court, or mayor of a city of such state that the copy is duly certified by the officer, who at the date of the certificate had the legal custody of the original.

8. Documents in the departments of the United States government, by the certificate of the legal custodian thereof.

§ 497, C. Civ. P.

§ 5700. Requisites of certificate to copy. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there is any, or if he is a clerk of a court having a seal, under the seal of such court.

§ 498, C. Civ. P.
am'd.

§ 5701. When person deemed dead. If any person upon whose life any estate in real property depends remains without the United States, or absents himself in the state or elsewhere for seven years together, such person must be accounted naturally dead in any action or proceeding concerning such property in which his death shall come in question, unless it is affirmatively proved that he was alive during that time.

§ 1, c. 82, 1895.

§ 5702. Probable duration of life. In all cases in which the probable duration of the natural life of any person from and after a particular age is material, the statistical tables known as the Carlisle tables of mortality are competent evidence of such probable duration or expectation of life.

§ 499, C. Civ. P.
am'd.

§ 5703. Confidential relations inviolate. A person cannot be examined as a witness in the following cases:

1. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

2. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

3. A physician or surgeon cannot, without the consent of his patient, be examined as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

4. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

§ 5704. **How waived.** If a person offers himself as a witness, that is to be deemed a consent to the examination, also, of an attorney, clergyman, priest, physician or surgeon on the same subject within the meaning of the first three subdivisions of the preceding section. § 500, C. Civ. P.

§ 5705. **When judge or juror witness.** The judge himself, or any juror may be called as a witness by either party; but in such case it is in the discretion of the court or judge to order the trial to be postponed and to take place before another judge or jury. § 501, C. Civ. P.

§ 5706. **Interpreters. Oath.** When the witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person, a resident of the proper county, may be subpoenaed by any court or judge to appear before such court or judge to act as an interpreter in any action or proceeding. The subpoena must be served and returned in like manner as a subpoena for a witness. Any person so subpoenaed who fails to attend at the time and place named in the subpoena is guilty of contempt. The oath of the interpreter shall be as follows: § 502, C. Civ. P.

"You do solemnly swear that you will justly, truly and impartially interpret to the oath about to be administered to him; and the questions which may be asked him, and the answers that he shall give to such questions, relative to the cause now under consideration before this court (or officer). So help you God."

If the interpreter has conscientious scruples as to taking an oath he may affirm in form as heretofore provided in case of witnesses.

ARTICLE 10.—PROCEEDINGS TO PERPETUATE TESTIMONY.

§ 5707. **Requisites of petition.** The testimony of a witness may be taken and perpetuated in the following manner: The applicant must produce to the judge of the district court a petition verified by the oath of the applicant, stating: § 503, C. Civ. P. am'd.

1. That the applicant expects to be a party to an action in a court in this state and the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship or any other matter which it may thereafter become material to establish, though no action may at the time be anticipated, or, if anticipated, the names of the parties to such action are unknown to the applicant; and,

3. The name of the witness to be examined, his place of residence and a general outline of the facts expected to be proved. The judge to whom such petition is presented shall make an order allowing the examination and designating the officer before whom the same shall be taken and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this state, must be personally served; if the parties reside out of the state or are unknown, such notice shall be served in such manner as the judge shall by order direct. The judge must also designate in his order the clerk of the district court to whom the deposition shall be returned when taken.

§ 5708. Officer's authority to act. The officer designated by the judge to take the deposition is authorized, if a resident of this state, on receiving a copy of the order of the judge, and of the notice prescribed in the last section with proof of its service or, if a resident without the state, on receiving the commission mentioned in the next section with proof of service, to take the deposition of the witnesses named in the order of the judge or in the commission and the taking of the same may be continued from time to time.

§ 5709. How examination made and authenticated. The examination must be by question and answer, and if the testimony is to be taken in any other state, it must be taken upon a commission to be issued by the judge allowing the examination under the seal of the court of which he is judge and upon interrogatories to be settled in the same manner as in case of depositions taken under commission in pending actions, unless the parties expectant otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness and shall then be authenticated and returned in the manner provided in article 7 of chapter 19. The order allowing the examination and the petition on which the same was granted with proof of service of the order and notice shall be filed with the clerk to whom the deposition is directed to be returned.

§ 5710. Papers filed evidence of what. The petition, order and papers filed as provided in the last section or a certified copy thereof are prima facie evidence of the facts stated therein to show compliance with the provisions of this article.

§ 507, C. Civ. P.
am'd.

§ 5711. When depositions may be used. If a trial is had between the applicant and the persons named in the petition as parties expectant, or their successors in interest, or between any parties, wherein it may be material to establish the facts which such depositions prove or tend to prove, upon proof of the death or insanity of the witnesses, or that they cannot be found, or are unable by reason of age or other infirmity to give their testimony, the depositions, or certified copies thereof, may be used by either party, subject to all legal objections, which shall be taken in the manner prescribed in section 5687; but if the parties attend at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

§ 5712. Same effect as oral testimony. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness and no other and every objection to the witness or to the relevancy of any question put to him or answer given by him

may be made in the same manner as if he was examined orally at the trial.

§ 5713. **Costs paid by whom.** The applicant shall pay the costs of all such proceedings. § 508, C. Civ. P.

CHAPTER 20.

MOTIONS AND ORDERS.

§ 5714. **Order defined.** Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. § 509, C. Civ. P.

§ 5715. **Motions defined.** An application for an order is a motion. § 510, C. Civ. P.
§ 1, c. 85, 1893.

§ 5716. **Where heard.** Motions upon notice may be heard by a judge of a district court in which the action or proceeding is not pending in the cases provided by law only, either in the district in which the action or proceeding is pending or in an adjoining district; but such motions when heard by the judge of the district in which the action or proceeding is pending can be heard only in such district. § 510, C. Civ. P.
§ 1, c. 85, 1893.

§ 5717. **Preferred motions.** A motion to vacate or modify a provisional remedy and an appeal from an order allowing a provisional remedy shall have preference over all other motions and appeals. § 510, C. Civ. P.
§ 1, c. 85, 1893.

§ 5718. **Order staying proceedings. Reference to take testimony.** No order to stay proceedings for a longer time than twenty days shall be granted, except to stay proceedings under an order or judgment appealed from or upon previous notice to the adverse party. When any party intends to make or oppose a motion in any court and it shall be necessary for him to have the affidavit of any person, who shall have refused to make the same, such court may by order appoint a referee to take the affidavit or deposition of such person. Such person may be subpoenaed and compelled to attend and make an affidavit before such referee the same as before a referee to whom it is referred to try an issue and the fees of such referee for such service shall be three dollars per day. § 510, C. Civ. P.
§ 1, c. 85, 1893.

§ 5719. **Order shall describe papers on which made.** When an order of the district court is made, which under the laws regulating appeals to the supreme court is an appealable order, such order shall upon its face by apt words briefly describe the affidavits, documents, papers and evidence upon which the order is made and the judges may at their discretion refuse to sign orders not so framed and the supreme court may at its discretion dismiss any appeal from an order which is not framed substantially in accordance with the requirements of this section. § 510, C. Civ. P.
§ 1, c. 85, 1893.

§ 5720. **Orders without notice.** Any order of the district court made without notice to the adverse party may be vacated or modified without notice by the judge who made it or the same may be vacated or modified on notice in the manner in which other motions are made. § 510, C. Civ. P.
§ 1, c. 85, 1893.

§ 511, C. Civ. P.
1. c. 119, 1885.

§ 5721. **Service of notice.** When notice of motion is necessary it must be served eight days before the time appointed for the hearing, but the court or judge may by order to show cause prescribe a shorter time.

§ 512, C. Civ. P.

§ 5722. **Extension of time.** The time within which any proceedings in an action must be had after its commencement, except the time within which an appeal must be taken may be enlarged upon an affidavit showing grounds therefor by a judge of the court. The affidavit or a copy thereof must be served with a copy of the order or the order may be disregarded.

CHAPTER 21.

NOTICES AND FILING AND SERVICE OF PAPERS.

§ 513, C. Civ. P.

§ 5723. **Notices must be in writing.** Notices shall be in writing; and notices and other papers may be served on the party or attorney in the manner prescribed in the next three sections, when not otherwise provided by this code.

§ 514, C. Civ. P.
am'd.

§ 5724. **How served.** The service may be personal by delivery to the party or attorney on whom the service is required to be made; or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office by leaving the paper with his clerk therein, or with a person having charge thereof; or when there is no person in the office by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office; or if it is not open so as to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

2. If upon a party it may be made by leaving the paper at his residence between the hours of six in the morning and nine in the evening with some person of suitable age and discretion.

§ 515, C. Civ. P.

§ 5725. **By mail, when.** Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places between which there is a regular communication by mail.

§ 516, C. Civ. P.

§ 5726. **Method of.** In case of service by mail the paper must be deposited in the post office, addressed to the person on whom it is to be served at his place of residence and the postage paid.

§ 517, C. Civ. P.

§ 5727. **Same. Double time.** When the service is by mail it shall be double the time required in cases of personal service, except service of notice of trial which may be made sixteen days before the day of trial including the day of service.

§ 518, C. Civ. P.
am'd.

§ 5728. **Personal. Eight days.** Notice of a motion or other proceeding before a court or judge, when personally served, shall be given at least eight days before the time appointed therefor.

§ 519, C. Civ. P.

§ 5729. **When notice unnecessary.** When a defendant shall not have demurred or answered, service of notice or papers in the ordinary proceedings in an action need not be made upon him, unless

he is imprisoned for want of bail, but shall be made upon him or his attorney if notice of appearance in the action has been given.

§ 5730. Service on nonresident. When a plaintiff or a defendant who has demurred or answered, or gives notice of appearance resides out of the state and has no attorney in the action the service may be made by mail, if his residence is known; if not known, on the clerk of the court for the party. § 520, C. Civ. P.

§ 5731. When summons and pleadings filed. The summons and the several pleadings in an action shall be filed with the clerk within ten days after the service thereof respectively, or the adverse party on proof of the omission shall be entitled without notice to an order from a judge that the same be filed within a time to be specified in the order or be deemed abandoned. § 521, C. Civ. P.

§ 5732. Service upon attorney. When a party shall have an attorney in the action, the service of papers shall be made upon the attorney instead of the party. § 522, C. Civ. P.

§ 5733. Certain process not included. The provisions of this chapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt. § 523, C. Civ. P.

CHAPTER 22.

DUTIES OF SHERIFFS AND CORONERS.

§ 5734. Service of papers. Whenever pursuant to this code the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him and shall be equally liable in all respects for neglect of duty; and if the sheriff is a party, the coroner shall be bound to perform the service, as he is now bound to execute process when the sheriff is a party; and the provisions of this code relating to the sheriff shall apply to coroners when the sheriff is a party. The sheriffs and coroners of the several counties in which the district courts are held shall have and exercise the same power and authority in the service of papers and the execution of writs and process of such courts in any county or place within the subdivision of which this county forms a part as they have or can exercise in their own county. § 524, C. Civ. P.

CHAPTER 23.

MISCELLANEOUS PROVISIONS.

- § 525, C. Civ. P. **§ 5735. Copy of lost papers.** If any process, original pleadings or any other paper is lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original.
- § 526, C. Civ. P. **§ 5736. Undertakings, where filed.** The various undertakings required to be given by this code must be filed with the clerk of the court, unless the court expressly provides for a different disposition thereof, except that the undertakings provided for in this code for the claim and delivery of personal property shall after the justification of the sureties be delivered by the sheriff to the parties respectively for whose benefit they are taken.
- § 527, C. Civ. P. **§ 5737. No title required to affidavits.** It shall not be necessary to entitle an affidavit in the action, but an affidavit made without a title or with a defective title shall be as valid and effectual for every purpose as if it was duly entitled, if it intelligibly refers to the action or proceeding in which it is made.
- § 528, C. Civ. P. **§ 5738. Consolidating actions.** When two or more actions are pending at one time between the same parties and in the same court upon causes of action which might have been joined, the court may order the actions to be consolidated.
- § 529, C. Civ. P. **§ 5739. When action deemed pending.** An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.
- § 530, C. Civ. P. **§ 5740. Clerk's register of actions.** The clerk must keep among the records of the court a register of actions. He must enter therein the title of the action with brief notes under it from time to time of all papers filed and proceedings had therein.

CHAPTER 24.

ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO
AND OF INFORMATION IN THE NATURE
OF QUO WARRANTO.

- § 531, C. Civ. P.
am'd. **§ 5741. Remedies obtainable by action instead of writ.** The remedies formerly attainable by the writ of scire facias, the writ of quo warranto and proceedings by information in the nature of quo warranto may be obtained by civil action in the district court under the provisions of this chapter and of chapter 26.
- § 5742. **Who plaintiff.** When the action is prosecuted by the attorney general, the state of North Dakota shall be plaintiff; when it is prosecuted by a private person, such person shall be the plaintiff therein and the proceedings in such action shall be the same as in an action by a private person, except as otherwise specially provided.

§ 5743. Against usurping officer, etc. An action may be commenced by the state, or any person who has a special interest in the action, against the parties offending in the following cases: § 534, C. Civ. P. am'd.

1. When any person shall usurp, intrude into or unlawfully hold or exercise any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state; or,

2. When any public officer, civil or military, shall have done or suffered an act which by the provisions of law shall make a forfeiture of his office; or,

3. When any association or number of persons shall act within this state as a corporation without being duly incorporated.

§ 5744. Security for costs from private party. Before commencing an action under this chapter at the request of a party having an interest therein the attorney general may require as a condition of commencing the same, that satisfactory security be given to indemnify the state against costs and expenses which may be incurred therein. § 535, C. Civ. P. am'd.

§ 5745. Complaint for usurping office. Arrest of defendant. The complaint in an action commenced against a person for usurping an office in addition to the statement of the cause of action may also set forth the name of the person rightfully entitled to the office with a statement of his right thereto; and in such case upon proof by affidavit that the defendant has received fees or emoluments belonging to the office and by means of his usurpation thereof, an order may be granted by the judge of the court for the arrest of such defendant and holding him to bail; and thereupon he shall be arrested and held to bail in the manner and with the same effect and subject to the same rights and liabilities as in other civil actions in which the defendant is subject to arrest. § 536, C. Civ. P. am'd.

§ 5746. What judgment shall include. In every such case judgment shall be rendered upon the right of the defendant and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant as justice shall require. § 537, C. Civ. P.

§ 5747. When claimant takes office. If judgment is rendered upon the right of the person so alleged to be entitled and the same is in favor of such person he shall be entitled after taking the oath of office and executing such official bond as may be required by law to take upon himself the execution of the office; and it shall be his duty immediately thereafter to demand of the defendant in the action all the books and papers in his custody or within his power, belonging to the office from which he shall have been excluded. § 538, C. Civ. P.

§ 5748. Refusal to deliver. Punishment. If the defendant refuses or neglects to deliver any of the books or papers, demanded as prescribed in the last section, he is guilty of a misdemeanor; and the court, or a judge thereof, may by order put the person entitled to the office in possession thereof and of all the books and papers belonging thereto; and any party refusing to deliver the same, when ordered as aforesaid, shall be punished as for a contempt. § 539, C. Civ. P. am'd.

§ 5749. Damages for usurpation. If judgment is rendered upon the right of the person so alleged to be entitled in favor of such person, he may recover by action the damages which he shall have sustained by reason of the usurpation by the defendant of the office from which such defendant has been excluded. § 540, C. Civ. P.

§ 541, C. Civ. P.

§ 5750. Joinder of several claimants. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 542, C. Civ. P.
am'd.

§ 5751. Judgment against intruder. When a defendant against whom such action shall have been commenced shall be adjudged guilty of usurping, intruding into or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that he be excluded from such office, franchise or privilege and also that the plaintiff recover costs against him. The court may also in its discretion impose upon such defendant a fine not exceeding five thousand dollars, which fine when collected shall be paid into the treasury of the state to the credit of the school fund.

CHAPTER 25.

ACTIONS BY THE STATE TO ANNUL PATENTS.

§ 5752. When authorized. Duty of attorney general. The state may bring an action to vacate or annul letters patent for lands granted by this state in either of the following cases:

1. When they were obtained by means of a fraudulent suggestion or concealment of a material fact made by or with the knowledge or consent of the person to whom they were issued.

2. When they were issued in ignorance of a material fact or through mistake.

3. When the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions upon which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

Whenever the attorney general has good reason to believe that any act or omission specified in this section can be proved and that the person to be made defendant has no sufficient legal defense, he must commence such an action.

CHAPTER 26.

ACTIONS BY AND AGAINST CORPORATIONS.

ARTICLE 1. — GENERAL PROVISIONS.

§ 5753. **Averments as to incorporation.** In an action by or against a corporation the complaint must aver that the plaintiff or the defendant as the case may be is a corporation. If incorporated under any law of this state, that fact must be averred; if not so incorporated, an averment that it is a foreign corporation is sufficient. The complaint need not set forth or specially refer to any act or proceeding by or under which the corporation was formed.

§ 5754. **When plaintiff not required to prove existence.** In an action by or against a corporation the plaintiff need not prove upon the trial the existence of the corporation, unless the answer is verified and contains an allegation, positive and not upon information and belief, that the plaintiff or the defendant, as the case may be, is not a corporation. § 1, c. 37, 1885.
am'd.

§ 5755. **When misnomer waived.** In actions or proceedings by or against corporations the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer or other pleading in the defendant's behalf.

§ 5756. **Foreign corporation may sue, defend, etc.** A corporation created by or under the laws of any other state, territory or country or of the United States may prosecute or defend an action or proceeding in the courts of this state in the same manner as corporations created under the laws of this state, except as otherwise specially prescribed by law. But such foreign corporation cannot maintain any action founded upon an act or upon any liability or obligation, express or implied, arising out of or made or entered into in consideration of any act which the laws of this state forbid a corporation or any association of individuals to do without express authority of law.

§ 5757. **Against foreign corporation which has ceased to exist.** An action for the recovery of money may be commenced and prosecuted to judgment against a corporation created by or under the laws of any other state, territory or country, or of the United States, although such corporation may have ceased from any cause whatever to act in whole or in part as a corporation, in the same manner as though it had not so ceased to act; and satisfaction of the judgment may be enforced out of any property in this state which such corporation owns or has an interest in or would own or have an interest in, had the same not ceased to act as aforesaid, whether held or controlled by such corporation or by any person or agent for its use and benefit in whole or in part, or by a trustee or assignee for the creditors of such corporation appointed under or deriving his authority from the laws of any other state, territory or country, and an attachment issued in such action may be executed on any such property.

ARTICLE 2. — ACTIONS AGAINST OFFICERS.

§ 5758. **For what authorized.** An action may be maintained against one or more trustees, directors, managers or other officers of a corporation to procure a judgment for the following purposes or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct in the management and disposition of the funds and property committed to their charge.

2. Compelling them to pay to the corporation which they represent or to its creditors any money, and the value of any property which they have acquired to themselves or transferred to others or lost or wasted by violation of their duties, or to transfer any such property held by them to the corporation.

3. Suspending a defendant from exercising his office, when it appears that he has abused his trust.

4. Removing a defendant from his office upon proof or conviction of misconduct and directing a new election to be held by the body or board duly authorized to hold the same in order to fill the vacancy created by the removal or when there is no such body or board, or when all the members thereof are removed, directing the removal to be reported to the secretary of state, who may fill the vacancy.

5. Setting aside an alienation of property made by one or more trustees, directors, managers or other officers of a corporation, contrary to a provision of law or for a purpose foreign to the lawful business and objects of the corporation, when the alienee knew or had notice of the purpose of the alienation.

6. Restraining and preventing such alienation, when it is threatened, or when there is good reason to apprehend that it will be made.

§ 5759. **Who may bring.** An action may be commenced as prescribed in the last section by the state, or, except when the action is brought for the purpose specified in subdivisions 3 and 4 of said section, by a creditor of the corporation, or by a trustee, director, manager or other officer of the corporation, having a general superintendence of its concerns, or by a stockholder of the corporation upon the neglect or refusal of such officer so to do at the request of such stockholder.

§ 5760. **Visitorial power not divested.** This article does not divest or impair any visitorial power over a corporation which is vested by a statute in a public officer or board.

ARTICLE 3. — ACTIONS AGAINST INSOLVENT CORPORATIONS.

§ 5761. **When action maintainable to sequester corporate property.** Whenever a judgment shall be obtained against any corporation incorporated under the laws of this state and an execution issued thereon shall have been returned unsatisfied in whole or in part, the judgment creditor or his legal representative may maintain an action to procure a judgment sequestering the property of a corporation and providing for a distribution thereof.

§ 5762. **When action to dissolve maintainable.** In either of the following cases, an action to procure a judgment dissolving a corporation, created by or under the laws of this state, and forfeiting

its corporate rights, privileges and franchises, may be maintained as prescribed in the next section:

1. When the corporation has remained insolvent for at least one year.

2. When it has neglected or refused for at least one year to pay and discharge its notes or other evidences of debt.

3. When it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers or power to make loans on pledges or deposits, or to make insurances, when it becomes insolvent or unable to pay its debts, or shall neglect or refuse to pay its notes or evidences of debt on demand, or has violated any provisions of the law by or under which it was incorporated or of any other law binding upon it.

§ 5763. Who may commence. The action specified in the last section shall be brought by the state. And whenever a creditor or stockholder of any corporation submits to the attorney general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney general omits for thirty days after such submission to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action and on obtaining leave may maintain the same accordingly.

§ 5764. When injunction granted. In an action brought as prescribed in this article, the court, or a judge thereof, may upon proof of the facts authorizing the action to be maintained grant an injunction, restraining the corporation and its trustees, directors, managers and other officers from collecting or receiving any debt or demand and from paying out or in any way transferring or delivering to any person any money, property or effects of the corporation during the pendency of the action, except by express permission of the court. When the action is brought to procure the dissolution of the corporation the injunction may also restrain the corporation and its trustees, directors, managers and other officers from exercising any of its corporate rights, privileges or franchises during the pendency of the action, except by express permission of the court. The provisions of article 3 of chapter 9 of this code, relating to granting, vacating and modifying an injunction apply to an injunction granted as prescribed in this section.

§ 5765. When receiver appointed. Powers of. The court may in any stage of an action under the preceding provisions of this article appoint one or more receivers to take charge of the property and effects of such corporation and to collect, sue for and recover the debts and demands that may be due and the property that may belong to such corporation, who shall in all respects possess the powers and authority conferred and be subject to all the obligations imposed upon receivers in other cases, and in all respects be subject to the control of the court.

§ 5766. Action proceeds to judgment though creditor bringing settles. Whenever an action shall have been brought against a corporation under the provisions of this article the court shall, if the proof is sufficient, proceed to final judgment in such case, dissolving such corporation and forfeiting its corporate rights, privileges and franchises, notwithstanding such creditor may settle with

such corporation; and in all such cases any creditor or the attorney general shall have the right to appear and prosecute such action. The original plaintiff shall not be liable for the costs of such further prosecution; but the creditor continuing the same, or the state, in case it is continued by the attorney general shall be liable therefor.

§ 5767. When stockholders, etc., made defendants. In an action against a corporation upon a claim for which its stockholders, directors, trustees or other officers, or any of them, are liable by law in any event or contingency, one or more or all of the persons so liable may be made parties defendant by the original or by an amended or supplemental complaint; and their liability may be declared and enforced by the judgment in such action.

§ 5768. When made defendants after judgment against corporation. If any creditor of a corporation whose directors, trustees or other officers or stockholders are liable for the payment of his demand desires to make them, or one or more of them, parties to the action after a judgment therein against the corporation, he may do so by filing a supplemental complaint against them founded upon such judgment.

§ 5769. Action against stockholders, etc. Whenever any creditor of a corporation shall seek to charge the directors, trustees or other officers or stockholders thereof on account of any liability created by law, he may commence and maintain an action for that purpose in the district court and may at his election join the corporation in such action.

§ 5770. Procedure therein. The court shall proceed therein as in other cases, and when necessary shall cause an account to be taken of the property and debts due to and from such corporation and appoint one or more receivers, who shall possess all the powers conferred and be subject to all the obligations imposed on receivers by the provisions of section 5765; but if upon the filing of the answer or upon the taking of such account it shall appear that the corporation is insolvent and that it has not property or effects to satisfy such creditor, the court may without appointing any receiver, proceed to ascertain the respective liabilities of such directors, trustees or other officers and stockholders and enforce the same by its judgment as in other cases.

§ 5771. Distribution of property. Upon a final judgment being rendered in any action under this article, the court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof to be made in the order prescribed in section 5779.

§ 5772. When payments enforced against stockholders, etc. In all cases in which the directors or other officers of a corporation, or the stockholders thereof shall have been made parties to an action in which judgment shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the corporation. If the debts of the corporation, or any part thereof, shall still remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders and adjudge the amount payable by each and enforce the judgment as in other cases.

§ 5773. Suits by other creditors restrained. All creditors required to come in as parties. Whenever any action shall be commenced against any corporation, its directors, trustees or other officers, or its stockholders according to the provisions of this article the court may by injunction on the application of either party and at any stage of the proceedings restrain all proceedings by any other creditor against the defendants in such action; and whenever it shall appear necessary or proper may order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action within a reasonable time not less than three months from the first publication of such notice and in default thereof such creditors shall be precluded from all benefit of the judgment which shall be made in such action and from any distribution which shall be made under such judgment.

§ 5774. Discovery compelled. In every such action the court may compel such corporation to discover any stock, property, things in action or effects alleged to belong or to have belonged to it, the transfer and disposition thereof and the consideration and all the circumstances of such distribution. Every officer, employee, agent or stockholder of such corporation and every person to whom it shall be alleged that any transfer of property or effects of such corporation has been made, or in whose possession or control the same is alleged to be, may be compelled in the discretion of the court to testify in relation thereto and to answer any questions touching the transfer or possession of such property or effects, although such answer may expose the corporation of which he is a member to a forfeiture of its corporate rights, or any of them, or may tend to criminate such witness or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before the court on such examination; provided, that no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

ARTICLE 4. — PROCEEDINGS TO ANNUL CORPORATIONS.

§ 5775. By whom brought. An action may be brought by the state against a corporation created by or under the laws of this state for the purpose of vacating or annulling the existence of such corporation on the ground that its incorporation or the renewal thereof was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporating or by some of them, or with their knowledge and consent.

§ 5776. Same. Causes for bringing. An action may be brought by the state or by any private person in the name of the state on leave granted therefor by the district court upon cause shown for the purpose of annulling the existence of any corporation created by or under the laws of this state, except a municipal corporation, whenever any such corporation shall:

1. Offend against any of the provisions of any law by or under which it shall have been created, altered or renewed; or,

2. Violate the provisions of any law by which such corporation shall have forfeited its corporate rights, privileges and franchises by abuse of its powers; or,

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or,

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges or franchises; or,

5. Whenever it shall exercise franchises or privileges not conferred upon it by law.

§ 5777. Attorney general to bring; who may, if he refuses. Whenever the attorney general shall have reason to believe that any of the acts or omissions specified in the preceding section can be established by proof, he shall apply for leave and upon leave granted bring such action in every case of public interest and in every other case in which satisfactory security shall be given to indemnify the state against the costs and expenses which may be incurred therein. In case the attorney general on application shall refuse to bring such action leave to bring the same by a private person shall be granted only on notice to the attorney general and the proposed defendant; and the court on granting leave in such case may require the prosecutor to give adequate security to the state to indemnify it and the defendant against all taxable costs therein.

§ 5778. When notice given to corporation. Upon the application by the attorney general to bring any such action the court may in its discretion direct notice of such application to be given to the corporation previous to the hearing and may hear the corporation in opposition thereto.

§ 5779. What judgment shall provide. Receiver. Distribution of property. If in any such action it shall be adjudged that a corporation has forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be excluded from such corporate rights, privileges and franchises and be dissolved; and thereupon the affairs of said corporation shall be wound up by and under the direction of a receiver to be appointed by the court and its property sold and converted into money; and the proceeds after paying the costs and expenses shall be distributed in the following order:

1. For the payment of taxes and debts due the United States, the state of North Dakota and any county, town or village therein.

2. For the payment of the legal and equitable liens upon the property of such corporation in the order of their priority.

3. The wages of laborers and employees accruing within six months previous to the commencement of the action.

4. For the payment of the other just debts of the corporation.

5. The residue of such moneys, if any, shall be distributed among the stockholders thereof.

When any corporation shall be adjudged to have exercised a franchise or privilege not conferred on it by law, the court may in its discretion instead of rendering a judgment as above provided in this section render a judgment that such corporation be excluded from exercising such franchise or privilege and that the plaintiff recover costs and may also, in either case in its discretion, fine such corporation in a sum not exceeding two thousand dollars to be collected and paid into the state treasury.

§ 5780. **How and when receiver appointed.** If such an action is pending in the district court the receiver shall be appointed by the judgment of dissolution, or by a subsequent order founded thereon. If it shall be pending in the supreme court, then upon the entry of such judgment of dissolution the attorney general shall forthwith commence an action in the proper district court for the appointment of such receiver and the winding up of the affairs of such corporation; and such corporation shall, notwithstanding such judgment of dissolution, be deemed to exist until a receiver shall be appointed, qualified and duly invested with the property of such corporation, but shall not be able to do any act or thing, other than to make over and transfer its assets to such receiver.

§ 5781. **Application of preceding sections.** The provisions of the two preceding sections so far as they relate to the distribution of the property of the corporation and actions to appoint receivers therefor shall apply to any corporation when the law under which it exists is repealed.

§ 5782. **How costs paid.** The necessary costs and disbursements, incurred in commencing and prosecuting such action by the attorney general in the name of the state, shall, when certified to by him, be audited by the state auditor and paid out of the state treasury. The receiver in such actions or the attorney general in case such moneys shall be delivered to him by such receiver shall repay to the state treasurer any money advanced by the state on account of such costs and disbursements.

§ 5783. **Where judgment roll filed.** Upon the rendition of such judgment against a corporation, other than an insurance corporation, or for vacating or annulling letters patent, the attorney general shall cause a copy of the judgment roll to be forthwith filed in the office of the secretary of state. If such judgment is against an insurance corporation, a copy of the judgment roll shall be filed in the office of the commissioner of insurance.

§ 5784. **Does not apply to certain corporations.** The provisions of this chapter shall not extend to corporations organized under the laws of this state for educational, charitable, religious or cemetery purposes.

CHAPTER 27.

ACTIONS TO RECOVER PENALTIES AND FORFEITURES.

§ 5785. **What forfeitures recoverable in civil action.** In all cases not otherwise specially provided for by law, when a forfeiture shall be incurred by any person, and the act or omission for which the same is imposed shall not also be a misdemeanor, such forfeiture may be sued for and recovered in a civil action. When such act or omission is punishable by fine and imprisonment, or by fine or imprisonment, or is specially declared by law to be a misdemeanor, it shall be deemed a misdemeanor within the meaning of this chapter. The word forfeiture as used in this chapter shall include any penalty

in money or goods, other than a fine, imposed by law as a punishment for crime.

§ 5786. By whom action brought. Such action shall be brought as follows:

1. If the entire recovery is payable to the state by the attorney general or the state's attorney of the proper county in the name of the state.

2. If the entire recovery is payable to a public corporation the action shall be brought in the name of such corporation by its proper legal officer.

3. If the recovery is payable partly to the state or a public corporation and partly to an individual, an action may be brought by such individual or by the state or public corporation, as the case may be, or by such individual and the state or public corporation.

§ 5787. Procedure same as civil action. What complaint to allege. The summons, pleadings and proceedings therein shall be the same as in a civil action. It shall be sufficient to allege in the complaint that the defendant is indebted to the plaintiff in the amount of the forfeiture claimed according to the provisions of the statute which imposes it, specifying the section and chapter containing such statute. And when such section imposes a forfeiture for several offenses or delinquencies, it shall specify the particular offense or delinquency for which the action is brought, with a demand for judgment for the amount of such forfeiture. In case the defendant is not a resident of the state an attachment may be issued in such action in like manner as in ordinary civil actions against nonresidents. Any such action may be brought for and the judgment therein may include as many forfeitures as the defendant may have incurred prior to its commencement.

§ 5788. Complaint for forfeited goods. In an action brought to recover goods or other things forfeited by the provisions of any statute, it shall be sufficient to allege in the complaint, that such goods or other things have been forfeited, specifying the section and chapter containing such statute with a demand of judgment for the delivery of such goods or other things or the value thereof.

§ 5789. When for highest sum specified. When a forfeiture is imposed, not exceeding a specific sum, or when it is not less than one sum nor more than another, the action may be brought for the highest sum specified; a judgment may be rendered for such sum as the court or jury shall assess or determine to be proportionate to the offense.

§ 5790. What judgment shall direct. In all cases when judgment is recovered pursuant to this chapter, it shall also include the costs of the action, and it shall direct that if the same is not paid, the defendant shall be committed to the county jail of the proper county there to be imprisoned for a specified time, not exceeding six months, which period shall be fixed by the court in view of all the circumstances of the case, or until otherwise discharged pursuant to law. In such cases a commitment shall issue as in ordinary criminal actions. This section shall not prevent the enforcement of any such judgment by execution at any time within one year from its rendition.

§ 5791. Forfeitures by ordinance, etc., how recovered. All forfeitures imposed by any by-law, ordinance or regulation of any town, city or village, or of any corporation organized under the laws of this state, when special provision is not otherwise made by law for

their recovery or punishment provided for, the act or omission for which they are imposed may be sued for and recovered, pursuant to this chapter. It shall be sufficient to allege in the complaint that the defendant is indebted to the plaintiff in the amount of the forfeiture claimed, specifying the by-law, ordinance or regulation which imposes it. And when such by-law, ordinance or regulation imposes a penalty or forfeiture for several offenses or delinquencies it shall specify the particular offense or delinquency for which the action is brought with a demand for a judgment for the amount of such forfeiture. All money collected on such judgment shall be paid to the treasurer of such town, city, village or corporation.

§ 5792. To whom moneys collected paid. All moneys collected on account of any judgment under the provisions of this chapter, except such as are payable by law to an individual shall be paid by the officer collecting the same to the treasurer of the state, or of the county, town, city or village entitled thereto as the case may be within twenty days after its collection or receipt by him; and in case of any neglect or failure in such payment the treasurer to whom such money should be paid may sue and collect the same of such officer by action in his name of office and upon the official bond of such officer, if any he has given, with interest at the rate of twelve per cent per annum from the time it should have been so paid.

§ 5793. City, etc., treasurers to collect forfeitures from justices. Every town, village and city treasurer shall demand of and recover from each justice of the peace or police magistrate of his town, village or city respectively all moneys received by such justice upon judgments rendered by him in actions under this chapter and every such justice shall on demand of such treasurer produce to him his docket for examination and all process and papers concerning or in such actions. In case of refusal or neglect by such justice to pay over promptly such moneys upon such demand, such treasurer shall institute an action therefor in his name of office against such justice and his sureties upon his official bond.

§ 5794. Property forfeited to state. Whenever by the provisions of law any property, real or personal, shall be forfeited to the state, or to any officer for its use, an action for the recovery of such property alleging the ground of the forfeiture may be brought by the attorney general or by the state's attorney of the county in which the action is triable in any court having jurisdiction thereof.

§ 547, C. Civ. P.
am'd.

CHAPTER 28.

ACTION FOR THE PARTITION OF REAL PROPERTY.

- § 548, C. Civ. P. **§ 5795. When may be brought.** When several co-tenants hold and are in possession of real property as partners, joint tenants or tenants in common in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof according to the respective rights of the persons interested therein and for a sale of such property or a part thereof, if it appears that a partition cannot be made without great prejudice to the owners.
- § 549, C. Civ. P. **§ 5796. What complaint must show.** The interests of all persons in the property, whether such persons are known or unknown, must be set forth in the complaint specifically and particularly as far as known to the plaintiff; and if one or more of the parties or the share or quantity of interest of any of the parties is unknown to the plaintiff, or is uncertain, or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder so that such parties cannot be named, that fact must be set forth in the complaint.
- § 550, C. Civ. P. **§ 5797. Only lienors of record.** No person having a conveyance of, or claiming a lien on the property, or some part of it, need be made a party to the action, unless such conveyance or lien appears of record.
- § 551, C. Civ. P. **§ 5798. Lis pendens required.** Immediately after filing the complaint in the district court the plaintiff must record in the office of the register of deeds of the county, or of the several counties in which the property is situated a notice of the pendency of the action, containing the names of the parties, so far as known, the object of the action and a description of the property to be affected thereby. From the time of filing such notice for record all persons shall be deemed to have notice of the pendency of the action.
- § 552, C. Civ. P. **§ 5799. To whom summons directed.** The summons must be directed to all the joint tenants and tenants in common and all persons having an interest in or any lien of record by mortgage, judgment or otherwise upon the property or upon any particular portion thereof; and generally to all persons unknown or who have or claim any interest in the property.
- § 553, C. Civ. P. **§ 5800. Service by publication.** When service of the summons is made by publication, the summons as published must be accompanied by a notice that the object of the action is to obtain a partition of the property, which is the subject of the action, briefly describing the same.
- § 554, C. Civ. P. **§ 5801. Requisites of answers.** The defendants who have been personally served with the summons and a copy of the complaint, or who have appeared without such service must set forth in their answer, fully and particularly the origin, nature and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment or otherwise they must state the original amount and date of the same, and the sum remaining due thereon; also whether the same has been secured in any other way or not; and if secured, the nature and extent of such security or they are deemed to have waived their right to such lien.

§ 5802. **Title, proofs and judgment.** The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried and determined in such action; and when a sale of the premises is necessary the title must be ascertained by proof to the satisfaction of the court before the judgment of sale can be made; and when service of the complaint has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered; except that when there are several unknown persons, having an interest in the property, their rights may be considered together in the action as not between themselves. § 555, C. Civ. P.

§ 5803. **When partial partition adjudged.** Whenever from any cause it is in the opinion of the court impracticable or highly inconvenient to make a complete partition in the first instance among all the parties in interest, the court may first ascertain and determine the shares or interest respectively held by the original co-tenants and thereupon adjudge and cause a partition to be made, as if such original co-tenants were the parties and sole parties in interest and the only parties to the action and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained or allotted as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof as they may desire. § 556, C. Civ. P.

§ 5804. **Referee to determine outstanding liens.** If it appears to the court by the certificate of the register of deeds, or clerk of the district court, or by the sworn or verified statement of any person who may have examined or searched the records that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencement of the action and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid or, if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner and if secured the nature and extent of the security. § 557, C. Civ. P.

§ 5805. **Notice to appear before referee. Service. Report.** The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee, appointed as provided in the preceding section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the amount due or to become due contingently or absolutely thereon. In case such person is absent or his residence is unknown, service may be made by publication or notice to his agent under the direction of the court in such manner as may be proper. The report of the referee must thereupon be made to the court and must be confirmed, modified or set aside and a new reference ordered as the justice of the case may require. § 558, C. Civ. P.

§ 5806. **Sale or partition.** If it is alleged in the complaint and established by evidence, or if it appears by the evidence without such allegation in the complaint to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be § 559, C. Civ. P.

made without great prejudice to the owners, the court may order a sale thereof. Otherwise upon the requisite proof being made it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

§ 580. C. Civ. P.

§ 5807. Method and rule of partition. In making the partition referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks and may employ a surveyor with the necessary assistants to aid them. Before making partition or sale the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road or street and the portion so set apart shall not be assigned to any of the parties, or sold, but shall remain an open and public way, road or street, unless the referees shall set the same apart as a private way for the use of the parties interested, or some of them. their heirs or assigns, in which case it shall remain such private way.

§ 561. C. Civ. P.

§ 5808. Referee's report. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the share allotted to each party with a particular description of each share.

§ 582. C. Civ. P.

§ 5809. Judgment on report. Effect of. The court may confirm, change, modify or set aside the report and, if necessary, appoint new referees. Upon the report being confirmed judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive:

1. On all persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years, or as entitled to the reversion, remainder or the inheritance of such property, or any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life.

2. On all persons interested in the property, who may be unknown, to whom notice has been given in the action for partition by publication.

3. On all other persons claiming from such parties or persons, or either of them.

And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives or assigns of such decedent as if it had been entered before his death.

§ 583. C. Civ. P.

§ 5810. What tenants not affected. The judgment does not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

§ 584. C. Civ. P.

§ 5811. Payment of expenses. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

§ 5812. **Liens follow owner's share.** When the lien is on an undivided interest or estate of any of the parties, such lien, if partition is made, shall thenceforth be a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien. § 565, C. Civ. P.

§ 5813. **Certain estates set off.** When a part of the property only is ordered to be sold, if there is an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold. § 566, C. Civ. P.

§ 5814. **How proceeds of incumbered property applied.** The proceeds of the sale of incumbered property must be applied under the direction of the court as follows: § 567, C. Civ. P.

1. To pay its just proportion of the general costs of the action.
2. To pay the costs of the reference.
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment.
4. The residue among the owners of the property sold, according to their respective shares therein.

§ 5815. **Lienor having other security.** Whenever any party to an action who holds a lien upon the property, or any part thereof, has other security for the payment of the amount of such lien the court may, in its discretion, order such security to be exhausted before distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof. § 568, C. Civ. P.

§ 5816. **Distribution by referee.** The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction is given all of such proceeds and securities must be paid into court, or deposited therein, or as directed by the court. § 569, C. Civ. P.

§ 5817. **Part of action continued.** When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court the action may be continued as between such parties for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in the controversy by pleading as in an original action. § 570, C. Civ. P.

§ 5818. **How sales made.** All sales of real property made by referees under this chapter must be made at public auction to the highest bidder upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale and if the property, or any part of it, is to be sold subject to a prior estate, charge or lien, that must be stated in the notice. § 571, C. Civ. P.

§ 5819. **Terms of sale fixed by court.** The court must in the order for sale direct the terms of credit which may be allowed for the purchase money of any portion of the real property, of which it may direct a sale on credit and for that portion of which the purchase money is required to be invested for the benefit of unknown owners, infants and owners out of the state. § 572, C. Civ. P.

- § 573, C. Civ. P. **§ 5820. Security for purchase money.** The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, or such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares, in the name of the clerk of the district court, and his successors in office.
- § 574, C. Civ. P. **§ 5821. Estate for life or years. Compensation to.** The person entitled to a tenancy for life or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate and which the person so entitled may consent to accept instead thereof by an instrument in writing filed with the clerk of the court. Upon the filing of such consent the clerk must enter the same in the minutes of the court.
- § 575, C. Civ. P. **§ 5822. Compensation when consent not given.** If such consent is not given, filed and entered as provided in the last section at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale after deducting expenses will be a just and reasonable sum to be allowed on account of such estate and must order the same to be paid to such party or deposited in court for him, as the case may require.
- § 576, C. Civ. P. **§ 5823. Same when unknown person.** If the persons entitled to such estate for life or years are unknown, the court may provide for the protection of their rights in the same manner as far as may be as if they were known and had appeared.
- § 577, C. Civ. P. **§ 5824. Value of future estates settled by court.** In all cases of sales when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportionate value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.
- § 578, C. Civ. P. **§ 5825. Terms of sale made known at time.** In all cases of sales of property the terms must be made known at the time, and if the premises consist of distinct farms or lots, they must be sold separately.
- § 579, C. Civ. P. **§ 5826. Who cannot purchase.** Neither of the referees nor any person for the benefit of either of them can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.
- § 580, C. Civ. P. **§ 5827. Report of sale.** After completing a sale of property, or any part thereof, ordered to be sold, the referees must report the same to the court with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale and the securities, if any, taken. The report must be filed in the office of the clerk of the district court where the property is situated.
- § 581, C. Civ. P. **§ 5828. Order to convey.** If the sale is confirmed by the court an order must be entered, directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of sale.

§ 5829. **Receipt of lienor, when purchaser.** When a party § 582. C. Civ. P.
entitled to a share of the property or an incumbrancer entitled to
have his lien paid out of the sale, becomes a purchaser, the referees
may take his receipt for so much of the proceeds of the sale as
belongs to him.

§ 5830. **Record and bar of conveyance.** The conveyance § 583. C. Civ. P.
must be recorded in the county where the premises are situated, and
shall be a bar against all persons interested in the property in any
way, who shall have been named as parties in the action; and against
all such parties and persons as were unknown, if the summons was
served by publication and against all persons claiming under them, or
either of them, and against all persons having unrecorded deeds or
liens at the commencement of the action.

§ 5831. **Investment of unknown owner's proceeds.** When § 584. C. Civ. P.
there are proceeds of a sale belonging to an unknown owner or to a
person without the state who has no legal representative within it,
the same must be invested in bonds of the United States for the ben-
efit of the persons entitled thereto.

§ 5832. **Securities taken in name of clerk.** When the § 585. C. Civ. P.
security of the proceeds of the sale is taken, or when an investment
of any proceeds is made, it must be done, except as herein otherwise
provided, in the name of the clerk of the district court of the county
where the papers are filed, and his successors in office, who must hold
the same for the use and benefit of the parties interested, subject to
the order of the court.

§ 5833. **When in the name of parties.** When security is § 586. C. Civ. P.
taken by the referees on a sale and the parties interested in such
security by an instrument in writing under their hands delivered to
the referees, agree upon the shares and proportions to which they are
respectively entitled, or when shares and proportions have been
previously adjudged by the court, such securities must be taken in
the names of and payable to the parties respectively entitled thereto,
and must be delivered to such parties upon their receipts therefor.
Such agreement and receipt must be returned and filed with the
clerk.

§ 5834. **Clerk's duty.** The clerk of the district court, in whose § 587. C. Civ. P.
name a security is taken, or by whom an investment is made, and his
successor in office, must receive the interest and principal as it
becomes due, and apply and invest the same as the court may direct;
and must deposit with the county treasurer all securities taken, and
keep an account in a book provided and kept for that purpose in the
clerk's office, free for inspection by all persons, of investments and
moneys received by him thereon, and the disposition thereof.

§ 5835. **Compensation for inequality.** When it appears that § 588. C. Civ. P.
the partition cannot be made equal between the parties according to
their respective rights, without prejudice to the rights and interests
of some of them, and a partition is ordered, the court may adjudge
compensation to be made by one party to another, on account of the
inequality; but such compensation shall not be required to be made
to others by owners unknown, nor by an infant, unless it appears that
such infant has personal property sufficient for that purpose, and that
his interest will be promoted thereby. And in all cases the court
has power to make compensatory adjustment between the respective
parties according to the ordinary principles of equity.

- § 589, C. Civ. P. **§ 5836. To whom infant's share paid.** When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the especial guardian appointed for him in the action, upon giving the security required by law or directed by order of court.
- § 590, C. Civ. P. **§ 5837. Share of insane and incompetent.** The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking approved by a judge of the court, that he will faithfully discharge the trust imposed in him, and will render a true and just account to the person entitled or to his legal representative.
- § 591, C. Civ. P. **§ 5838. Guardian may consent to partition without action.** The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs, who is interested in real property held in joint tenancy, or in common, or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant, or other person entitled and may execute a release in his behalf to the owners of the shares of the parts, to which they may be respectively entitled, upon an order of the court.
- § 592, C. Civ. P. **§ 5839. Costs, fees and disbursements.** The costs of a partition including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees and other disbursements, must be paid by the parties respectively entitled to share in the lands divided in proportion to their respective interests therein and may be included and specified in the judgment. In that case they shall be a lien on the several shares and the judgment may be enforced by execution against such shares and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.
- § 593, C. Civ. P. **§ 5840. Single referee.** The court with the consent of the parties may appoint a single referee instead of three referees in the proceeding under this chapter; and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.
- § 594, C. Civ. P. **§ 5841. Abstract of title. How cost paid.** If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action and any of the defendants shall have had such abstract afterwards made, the cost of the abstract with interest thereon from the time the same is subject to the inspection of the respective parties must be allowed and taxed. Whenever such abstract is produced by the plaintiff before the commencement of the action he must file with his complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing

the action and any defendant shall procure the same to be made, he shall as soon as he has directed it to be made file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished. The court or the judge thereof may direct from time to time during the progress of the action, who shall have the custody of the abstract.

§ 5842. **Who may make abstracts.** The abstract mentioned § 595, C. Civ. P. in the last preceding section may be made by any competent searcher of records and need not be certified by the register of deeds or other officer; but instead thereof it must be verified by the affidavit of the person making it, to the effect that he believes it to be correct; but the same may be corrected from time to time, if found incorrect, under the direction of the court.

§ 5843. **Interest on disbursements.** Whenever during the § 596, C. Civ. P. progress of the action for partition any disbursements shall have been made under the direction of the court or the judge thereof by a party thereto interest must be allowed thereon from the time of making such disbursements.

CHAPTER 29.

FORECLOSURE OF MORTGAGES AND LIENS.

ARTICLE 1. — FORECLOSURE BY ADVERTISEMENT.

§ 5844. **Power of sale. Foreclosure authorized.** Every § 597, C. Civ. P. mortgage of real property containing a power of sale may upon default being made in the conditions of such mortgage be foreclosed by advertisement in the cases and manner hereinafter provided. am'd.

§ 5845. **When proceedings enjoined.** When the mortgagee § 1, c. 61, 1883, or his assignee has commenced proceedings for the foreclosure of a mortgage by advertisement and it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of a judge of the district court of the county where the mortgaged property is situated, that the mortgagor has a legal counterclaim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may by an order to that effect enjoin the mortgagee or his assignee from foreclosing such mortgage by advertisement and direct that all further proceedings for the foreclosure be had in the district court properly having jurisdiction of the subject matter; and for the purpose of carrying out the provisions of this section service may be made upon the attorney or agent of the mortgagee or assignee. am'd.

§ 5846. **Prerequisites to right to foreclose.** To entitle a § 598, C. Civ. P. party to make such foreclosure it shall be requisite: am'd.

1. That default in a condition of such mortgage shall have occurred by which the power of sale has become operative.
2. That no action or proceedings shall have been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof; or if any action or proceeding has been instituted, that

the same has been discontinued or that an execution upon the judgment rendered therein has been returned unsatisfied in whole or in part; and,

3. That the mortgage containing such power of sale has been duly recorded and, if it shall have been assigned, that all the assignments thereof have been duly recorded.

§ 599, C. Civ. P.
am'd.

§ 5847. Foreclosure for installments. In case of mortgages given to secure the payment of money by installments, each of the installments mentioned in the mortgage shall be taken and deemed to be a separate and independent mortgage and the mortgage for each of such installments may be foreclosed in the same manner and with like effect, as if a separate mortgage was given for each of such installments and a redemption of any such sale shall have the like effect, as if the sale for such installment had been made upon a prior independent mortgage.

§ 600, C. Civ. P.
am'd.

§ 5848. How notice published. Notice that the mortgage will be foreclosed by a sale of the mortgaged premises or some part thereof must be given by publishing the same six times, once in each week for six successive weeks in a newspaper of the county where the premises intended to be sold, or some part thereof, are situated, if there is one, and if not, then in some newspaper published at the seat of government.

§ 5849. Form of notice. Such notice shall be in substantially the following form:

Notice is hereby given that that certain mortgage, executed and delivered by, mortgagor, to, mortgagee, dated the day of, 189..., and filed for record in the office of the register of deeds of the county of and state of North Dakota on the day of, 189..., and recorded in book of at page (and assigned by said mortgagee to), will be foreclosed by a sale of the premises in such mortgage and hereinafter described at the front door of the courthouse in the county of and state of North Dakota at the hour of o'clock M. on the day of, 189..., to satisfy the amount due upon such mortgage on the day of sale. The premises described in such mortgage and which will be sold to satisfy the same are described as follows: (here insert description.)

There will be due on such mortgage at the date of sale the sum of dollars.

§ 602, C. Civ. P.
am'd.

§ 5850. How sale made. The sale must be at public auction between the hours of nine o'clock in the forenoon and the setting of the sun on that day in the county in which the premises to be sold, or some part of them, are situated and must be made by the sheriff, acting in person or by his deputy, of the county to the highest bidder.

§ 604, C. Civ. P.
am'd.

§ 5851. Separate sale of tracts. If the mortgaged premises consist of distinct farms, tracts or lots they must be sold separately and no more farms, tracts or lots must be sold than shall be necessary to satisfy the amount due on such mortgage at the date of the sale and the costs and expenses allowed by law.

§ 605, C. Civ. P.

§ 5852. Mortgagee may purchase. The mortgagee, his assigns, or their legal representatives, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

§ 5853. **Certificate of sale. Contents. Record.** When- § 606, C. Civ. P.
ever any real property shall be sold by virtue of a power of sale con- am'd.
tained in any mortgage, the officer making the sale shall immediately
give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold.
2. The price bid for each distinct lot or parcel.
3. The whole price paid.
4. The costs and fees for making the sale.

Such certificate must be executed and acknowledged and may be
recorded as provided in case of a certificate of sale of real property
upon execution and shall have the same validity and effect.

§ 5854. **Redemption by whom. Rights.** The property § 607, C. Civ. P.
sold may be redeemed within one year from the day of sale in like
manner and to the same effect as provided in chapter 11 of this code
for redemption of real property sold upon execution so far as the
same may be applicable, by:

1. The mortgagor or his successor in interest in the whole or any
part of the property.
2. A creditor having a lien by judgment or mortgage on the prop-
erty sold, or on some share or part thereof, subsequent to that on
which the property was sold. Such creditor is termed a redemptioner
and has all the rights of a redemptioner under that chapter. And
the mortgagor and his successor in interest has all the rights of the
judgment debtor and his successor in interest as provided therein.

§ 5855. **Notice to officer.** The notice of redemption required § 608, C. Civ. P.
to be given to the sheriff under that chapter may in foreclosure by
advertisement be given to the officer or person making the sale.

§ 5856. **When deed issues. Effect of.** If such mortgaged § 609, C. Civ. P.
premises are not redeemed it shall be the duty of the officer, or his am'd.
successor in office, or other person who sold the same, or some other
person appointed by the district court for that purpose to complete
such sale by executing a deed of the premises so sold to the original
purchaser, his heirs or assigns, or to any person who may have
acquired the title and interest of such purchaser by redemption or
otherwise. Such deed shall have the same force and effect as if it
had been executed pursuant to a sale under a foreclosure of the mort-
gage by an action in which all persons having an interest in or lien
upon the property subsequent to the mortgage were made parties and
duly served with process.

§ 5857. **Disposition of surplus.** If after any such sale there § 610, C. Civ. P.
remains in the hands of the officer or other person making the sale § 1, c. 29, 1887.
any surplus money after satisfying the mortgage on such real prop- am'd.
erty sold and payment of the costs and expenses of such foreclosure
and sale, such surplus shall be held by the officer or person making
the sale for the period of thirty days after the sale, unless some per-
son who had at the time of the sale an interest in or lien upon the
property sold, or some part thereof, shall serve a written notice upon
the person or officer making the sale of a claim to such surplus or
some part thereof. If no such notice of claim is served within the
period aforesaid, the officer or person making the sale shall upon the
expiration of such period and upon demand pay over such surplus
to the mortgagor, his legal representatives or assigns.

§ 5858. **Petition of claimant for surplus.** If the notice
mentioned in the last section is served upon the officer or person
making the sale within the time therein provided, such officer or per-

son shall forthwith pay the surplus into the district court of the county in which the sale was made. Any person claiming the surplus, or any part thereof by reason of a lien upon or interest in the property as provided in the last section may at any time before an order is made, as prescribed in the next section but one, file in the office of the clerk of the district court of the county where the sale took place a petition stating the nature and extent of his claim and praying for an order directing the payment to him of the surplus money, or a part thereof.

§ 5859. Order directing payment. Notice of. A person filing the petition as prescribed in the last section may after the expiration of thirty days from the day of sale apply to the district court for an order, pursuant to the prayer of his petition. Notice of the application must be served either by mail or personally upon each person who has filed a like petition and also upon the mortgagor and upon the person in actual possession of the property, if any, and also upon every person having an interest in or lien upon the property sold subsequent to the mortgage foreclosed, and whose interest or lien was at the time of the sale of record in the proper office in the county or counties in which the property sold is situated. Such notice shall be served at least eight days before the application. But if it is shown to the court by affidavit that service upon any person required to be served cannot be so made with due diligence, notice may be given to him in any manner which the court directs.

§ 5860. Order for distribution. Upon the presentation of the petition with due proof of the service of the notice of the application the court must ascertain the amount due to the petitioner and to each other person whose claim is a lien upon the surplus money and the priorities of the several liens; and the court shall thereupon make such order for the distribution of the surplus money as justice requires and the same shall be distributed accordingly.

§ 611, C. Civ. P.
am'd.

§ 5861. Affidavit of publication filed. An affidavit made as provided in section 5693 of the publication of the notice of the sale and of any postponement must be filed for record by the officer making the sale in the office of the register of deeds of the county in which the real property is situated within thirty days after the sale.

§ 612, C. Civ. P.

§ 5862. Affidavit recorded. Such affidavit must be recorded at length by the register of deeds of the county in which the real property is situated in a book kept for the record of mortgages and such original affidavit, the record thereof and certified copies of such record shall be prima facie evidence of the facts therein contained.

§ 613, C. Civ. P.
am'd.

§ 5863. Note on margin of mortgage record. A note referring to the page and book where the evidence of any sale made under a mortgage is recorded shall be made by the register in the margin of the record of such mortgage.

§ 615, C. Civ. P.
1. c. 28, 1887.
am'd.

§ 5864. Costs and disbursements. The party foreclosing a mortgage by advertisement shall be entitled to his costs and disbursements out of the proceeds of the sale and shall also be entitled to such attorney's fee as may be allowed by law.

ARTICLE 2.—FORECLOSURE BY ACTION.

§ 616, C. Civ. P.
am'd.

§ 5865. Authorized. An action may be brought in the district court for the foreclosure or satisfaction of a mortgage upon real property in accordance with the provisions of this article.

§ 5866. **Judgment includes what.** Whenever an action shall be brought for the foreclosure or satisfaction of a mortgage the court shall have power to render a judgment against the mortgagor for the amount of the mortgage debt due at the time of the rendition of such judgment and the costs of the action and to order and decree a sale of the mortgaged premises, or such part thereof as may be sufficient to pay the amount so adjudged to be due, and costs of sale and shall have power to order and compel the delivery of the possession of the premises to the purchaser; but in no case under this article shall the possession of the premises so sold be delivered to the purchaser or person entitled thereto until after the expiration of one year from such sale; and the court may direct the issuing of an execution for the balance that may remain unsatisfied after applying the proceeds of such sale. § 617, C. Civ. P.

§ 5867. **Action excludes other proceedings.** After such action shall be commenced, while the same is pending, no proceedings at law shall be had for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court. § 618, C. Civ. P.

§ 5868. **When others made parties.** If the mortgage debt is secured by the obligation, or other evidence of debt, or any other person than the mortgagor, the plaintiff may make such other person a party to the action and the court may render judgment for the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as against the mortgagor, and may enforce such judgment as in other cases by execution or other process. § 619, C. Civ. P.

§ 5869. **What complaint shall state.** In an action for the foreclosure or satisfaction of a mortgage the complaint shall state whether any proceedings have been had at law or otherwise for the recovery of the debt secured by such mortgage, or any part thereof; and if there has, whether any and what part thereof has been collected. § 620, C. Civ. P.

§ 5870. **When judgment at law obtained.** If it appears that any judgment has been obtained in an action at law for the moneys demanded by such complaint, or any part thereof, no proceedings shall be had in such case, unless an execution against the property of the defendant in such judgment has been issued and the sheriff or other officer shall have made return that the execution is unsatisfied in whole or in part and that the defendant has no property out of which to satisfy such execution. § 621, C. Civ. P. am'd.

§ 5871. **Sales made by whom and where.** All sales of mortgaged premises under an order and decree of foreclosure must be made by a referee, sheriff or his deputy of the county or subdivision where the court in which the judgment is rendered is held, or other person appointed by the court for that purpose, and must be made in the county or subdivision where the premises, or some part of them, are situated and shall be made upon the like notice and in the same manner as provided by law for the sale of real property upon execution. § 622, C. Civ. P.

§ 5872. **Certificate of sale. Deed and effect.** Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this article, the officer or other person making the sale must give to the purchaser a certificate of sale as provided by section 5853; and at the expiration of the time for the redemption of such property, if the same is not redeemed the person or officer making the sale, or his successor in office, or other officer § 623, C. Civ. P. am'd.

appointed by the court must make to the purchaser, his heirs or assigns, or to any person who has acquired the title of such purchaser by redemption or otherwise a deed or deeds of such property. Such deed shall vest in the grantee all the right, title and interest of the mortgagor in and to the property sold at the time the mortgage was executed, or which was subsequently acquired by him and shall be a bar to all claim, right or equity of redemption in or to the property by the parties to such action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which such judgment was rendered.

§ 624, C. Civ. P. **§ 5873. Application of proceeds.** The proceeds of every such sale must be applied to the discharge of the debt adjudged by the court to be due and of the costs; and if there is any surplus it must be brought into court for the use of the defendant or of the person entitled thereto, subject to the order of the court.

§ 625, C. Civ. P. **§ 5874. When surplus invested.** If such surplus, or any part thereof, shall remain in court for the term of three months without being applied for, the judge of the district court may direct the same to be put out at interest for the benefit of the defendant, his representatives or assigns, subject to the order of the court.

§ 626, C. Civ. P. **§ 5875. Complaint dismissed on payment of installments due.** Whenever an action shall be commenced for the foreclosure of a mortgage upon which there shall be due any interest, or any portion or installment of the principal and there shall be other portions or installments to become due subsequently, the complaint shall be dismissed upon the defendant's bringing into court at any time before decree of sale the principal and interest due with costs and disbursements.

§ 627, C. Civ. P.
am'd. **§ 5876. When payment stays proceedings.** If at any time after judgment and before sale, the defendant shall bring into court the principal and interest due with costs, the proceedings in such action shall be stayed; but the court may enforce the judgment by a further order upon a subsequent default in the payment of any of the installments or any part thereof, or of any interest thereafter becoming due on such mortgage.

§ 628, C. Civ. P. **§ 5877. Referee to view premises.** If the defendant shall not bring into court the amount due with costs or if for any other cause a judgment or decree shall be entered for the plaintiff, the court may appoint a referee to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels without injury to the interest of the parties, the decree must direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on such mortgage with costs and such judgment or decree shall remain as security for any subsequent default.

§ 629, C. Civ. P. **§ 5878. Successive judgments and sales.** If in the case mentioned in the preceding section there shall be any default subsequent to such judgment or decree in the payment of any portion or installment of the principal, or of any interest due upon such mortgage, the court may upon the application of the plaintiff by a further order founded upon such first judgment or decree direct a sale of so much of the mortgaged premises to be made under such decree as will be sufficient to satisfy the amount so due with costs of the application and the subsequent proceedings thereon, and the same proceedings may be had as often as a default happens.

§ 5879. **Sale of whole on first default.** If in any of the foregoing cases it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, judgment or decree must in the first instance be entered for the sale of the whole premises accordingly.

§ 630, C. Civ. P.

§ 5880. **Rebate on undue part.** In such case the proceeds of such sale must be applied as well to the interest or portion or installment of the principal due as toward the whole or residue of the sum secured by such mortgage and not due and payable at the time of such sale, and if such residue does not bear interest, then the court may direct the same to be paid with a rebate of the legal interest for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale after paying the sum due with costs to be put out at interest for the benefit of the plaintiff to be paid to him as the installments or portions of the principal or interest may become due and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them by order of the court.

§ 631, C. Civ. P.
am'd.

§ 5881. **Redemption.** All real property sold upon foreclosure of mortgages by order, judgment or decree of court may be redeemed at any time within one year after such sale as prescribed by section 5854 upon foreclosure by advertisement.

§ 633, C. Civ. P.

§ 5882. **Injury to property restrained.** The court may by injunction on good cause shown restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage thereon and until the expiration of the time allowed for redemption.

§ 634, C. Civ. P.

ARTICLE 3.—FORECLOSURE OF MORTGAGES UPON PERSONAL PROPERTY.

§ 5883. **Power of sale. Foreclosure authorized.** A mortgage of personal property containing a power of sale upon default being made in the conditions of such mortgage, authorizing the exercise of such power, may be foreclosed in the manner and upon the notice in this article provided.

§ 1743, Civil C.
am'd.

§ 5884. **When proceedings enjoined.** When the mortgagee or his assignee has commenced foreclosure by advertisement and it shall be made to appear by the affidavit of the mortgagor, his agent or attorney, to the satisfaction of the judge of the district court of the county where the mortgaged property is situated that the mortgagee has a legal counterclaim or any other valid defense against the collection of the whole or any part of the amount claimed to be due on such mortgage, such judge may by an order to that effect enjoin the mortgagee or assignee from foreclosing such mortgage by advertisement and direct that all further proceedings for the foreclosure be had in the district court properly having jurisdiction of the subject matter; and for the purpose of carrying out the provisions of this section service may be made upon the attorney or agent of the mortgagee or assignee.

§ 1, c. 62, 1883.
am'd.

§ 5885. **Publication of notice of sale.** Notice that the mortgage will be foreclosed by a sale of the mortgaged property shall be published once and at least six days prior to the sale in a newspaper published at the place of sale, if there is one; otherwise in any news-

§ 4, c. 26, 1889.
am'd.

paper published in the county in which the sale is to be made; and if there is no newspaper published in the county, notice shall be given by posting the same in five public places in such county for at least ten days prior to the sale. If the mortgagor or his agent shall notify the mortgagee or his agent in writing at the time of the seizure of the property of his election that notice be given by posting instead of by publication, it shall be given accordingly as hereinbefore provided.

- § 1, c. 32, 1883.
am'd.
- § 5886. Contents of notice.** Such notice must specify:
1. The names of the mortgagor and mortgagee and of the assignee, if any.
 2. The date of the mortgage.
 3. The nature of the default and the amount claimed to be due thereon at the date of the notice.
 4. A description of the mortgaged property, conforming substantially to that contained in the mortgage.
 5. The time and place of sale.
 6. The name of the party, agent or attorney foreclosing such mortgage.
- § 5, c. 26, 1889.
am'd.
- § 5887. When sale made. Postponement.** All sales under this article shall be commenced between the hours of twelve o'clock noon and four o'clock in the afternoon on Saturday within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed one week by public announcement at the time of postponement when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the mortgagor.
- § 7, c. 26, 1889.
am'd.
- § 5888. Report of sale.** Within ten days after the sale of any mortgaged property as herein provided the person making the sale shall make out in writing a full report under oath of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the amount of the costs and expenses itemized and the disposition made by him of the proceeds of the sale and shall file the same in the office of the register of deeds of the county where the mortgage is filed, which report shall be received in all courts as prima facie evidence of the facts therein stated.
- § 8, c. 26, 1889.
§ 2, c. 40, 1890.
am'd.
- § 5889. Disposition of proceeds.** Out of the proceeds arising from the sale the person making the sale shall pay:
1. The costs and expenses of foreclosure.
 2. The amount of the mortgage debt to the person entitled thereto; and,
 3. The balance, if any, to the owner of the mortgaged property.
- § 3, c. 32, 1885.
- § 5890. Who may purchase at sale.** The mortgagee, his assigns, or any other person may in good faith become a purchaser of the property sold.
- § 9, c. 26, 1889.
am'd.
- § 5891. Stipulation waiving provisions of article void.** Any stipulation or agreement in any chattel mortgage by which any provisions of this article are waived shall be void.
- § 6, c. 26, 1889.
am'd.
- § 5892. Fees for publication of notice.** The fees for the publication of notice under the provisions of this article shall in no case exceed the sum of three dollars. No greater charge shall be valid for the keeping of live stock between the date of its seizure and the date of sale or redemption than is now provided by law for the keeping of live stock when impounded.

§ 5893. **Places of sale designated.** The boards of county commissioners of the several counties shall at their regular quarterly meeting in April each year designate not less than five public places in their respective counties, which shall be the only market places for the sale of chattels under the provisions of this article, unless the mortgagor and mortgagee agree upon and designate in writing another place in the county as the place of sale, in which case the sale shall be made at the place so designated, which written agreement or designation shall be attached to and filed with the report of sale. Growing or harvested crops, grain in bulk, lumber, cord wood, buildings or other like articles may be sold under the provisions of this article without moving the same to one of the market places herein provided for.

3. c. 26. 1889.
1. c. 40. 1890.
am'd.

§ 5894. **How redemption from sale made.** Any mortgagor of personal property, or his assignee, may redeem the same from a sale upon foreclosure of any mortgage within five days after such sale, exclusive of the day of sale by paying or tendering to the owner of the mortgage at the time of sale, his agent or attorney, or the person making the sale, the amount for which said property was sold with the costs of sale and interest at the rate of seven per cent per annum from the date of the sale. The mortgagor or his assignee, desiring to redeem such property shall at the time of sale give written notice to the person making the sale of his desire to make such redemption; otherwise he shall be deemed to have waived his right to do so. In case such notice is served, the person making such sale shall retain the possession of the property sold until the expiration of said five days, and shall be entitled to his reasonable expenses in caring for the same. In case a part only of the property sold is redeemed the redemptioner shall pay or tender in addition to the price for which such part was sold such a proportion of the costs of sale as said price bears to the entire price of all the property sold and also the reasonable expense of caring for the property redeemed and interest.

Sub. 1. § 1. c. 79.
1893.
am'd.

§ 5895. **Misdemeanor to remove from county.** When written notice of a desire to redeem personal property as provided in the last section has been given, any person removing such property from the county in which it was sold, prior to the period herein provided for redemption without the written consent of the owner of said property at the time of sale shall be guilty of a misdemeanor.

Sub. 2. § 1. c. 79.
1893.
am'd.

§ 5896. **Certificate of redemption.** Upon the payment or tender of the amount necessary to redeem, the mortgagee, or person to whom the same is paid or tendered, shall execute and deliver to the redemptioner a certificate of such redemption, particularly describing the property redeemed and the mortgage under which the same was sold, which certificate may be filed in the office of the register of deeds of the county in which the mortgage is filed and shall operate as a release of said property from the mortgage.

Sub. 3. § 1. c. 79.
1893.
am'd.

ARTICLE 4. — ACTIONS TO FORECLOSE LIENS ON PERSONAL PROPERTY.

§ 5897. **Foreclosure authorized.** An action may be maintained in the district court to foreclose any lien upon personal property.

§ 5898. **Warrant to seize property.** If the plaintiff is not in possession of the property, a warrant may at the time of issuing the summons, or any time before judgment, be issued by the clerk of

the court in which the action is commenced, commanding the sheriff to seize and safely keep the same to abide the final judgment in the action. Such warrant may be issued upon the filing of a verified complaint with the clerk, setting forth a cause of action in favor of the plaintiff and against the defendant for the foreclosure of a lien upon the property, possession of which is sought to be obtained. The sheriff must immediately execute the warrant by seizing the property and holding the same until disposed of according to law.

§ 5899. Form of warrant. The warrant mentioned in the last section, exclusive of the venue and title of the action, shall be in substantially the following form:

To the sheriff of the county of

The plaintiff in the above entitled action having filed in my office a verified complaint, setting forth a cause of action in favor of the plaintiff and against the defendant above named for the foreclosure of a lien upon the personal property hereinafter described and having given the undertaking required by law;

Now, therefore, you are hereby commanded immediately to seize and safely keep, until disposed of according to law, the following described personal property belonging to the defendant,..... situated in the county of and state of North Dakota, to-wit: (Here insert description of property).

Such warrant shall be attested and sealed in the same manner as a warrant of attachment.

§ 5900. Undertaking. Before issuing the warrant the clerk must require a written undertaking on the part of the plaintiff with sufficient surety to the effect, that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of any seizure under the warrant, not exceeding the sum named in the undertaking, which must be at least the amount claimed in the complaint and in no case less than one hundred dollars.

§ 674, C. Civ. P.
am'd.

§ 5901. Judgment must state what. In such action judgment in favor of the plaintiff must specify the amount due on the lien and direct a sale of the property to satisfy the same and the costs, by a person appointed thereby, or by an officer designated therein, in the manner provided for the sale of personal property under execution; and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the judgment and costs. It may also provide for the payment of the surplus to the owner of the chattel and for the safe-keeping of the surplus, if necessary, until it is claimed by him. If the defendant upon whom the summons is personally served is liable for the amount of the lien, or for any part thereof, judgment may be entered against him accordingly.

§ 5902. Certain provisions relating to attachments applicable. The provisions of the chapter on attachment relative to rebonding, the sale of perishable property and proceedings in case judgment is in favor of the defendant shall apply to proceedings under this article so far as the same are applicable.

§ 5903. Other remedies not affected. This article does not affect any existing right or remedy to foreclose or satisfy a lien upon personal property without action.

CHAPTER 30.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO
REAL PROPERTY AND OTHER ACTIONS
CONCERNING REAL ESTATE.

§ 5904. **Action to determine adverse claim.** An action may be maintained by any person having an estate or interest in real property against another who claims an estate or interest therein adverse to him for the purpose of determining such adverse claim. § 635, C. Civ. P. am'd.

§ 5905. **No costs on disclaimer or default.** If the defendant in such action disclaims in his answer any interest or estate in the property or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs. § 636, C. Civ. P.

§ 5906. **Description of property in complaint.** In an action for the recovery of real property it must be described in the complaint with such certainty as to enable an officer upon execution to identify it. § 637, C. Civ. P.

§ 5907. **Joinder of defendants.** In an action commenced by a person out of possession of real property to determine an adverse claim, interest or estate therein, the person making such adverse claim and persons in possession under him may be joined as defendants, and if the judgment is for the plaintiff, he may have a writ for the possession of the premises as against the defendants in the action against whom the judgment is rendered. § 638, C. Civ. P. am'd.

§ 5908. **Of plaintiffs.** Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joint tenants, copartners or in severalty, may unite in an action against any person claiming an adverse estate or interest therein for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same. § 639, C. Civ. P.

§ 5909. **Judgment when right fails after action brought.** In an action for the recovery of real property, when the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property. § 640, C. Civ. P.

§ 5910. **Improvements allowed as counterclaim.** In an action for the recovery of real property upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of the plaintiff in good faith, the value of such improvements must be allowed as a counterclaim by such defendant. § 641, C. Civ. P.

§ 5911. **How counterclaim pleaded.** The counterclaim in such action must set forth among other things the value of the land aside from the improvements thereon and also as accurately as practicable the improvements upon the land and the value thereof. § 642, C. Civ. P.

§ 5912. **Specific finding as to improvements.** Issues may be joined and tried as in other actions and the value of the land aside from the value of the improvements thereon and the separate value of the improvements must be specifically found by the verdict of the jury, the report of the referee or the findings of the court. § 643, C. Civ. P.

- § 644, C. Civ. P. **§ 5913. Adjustment of cross judgments.** The judgment of the court upon such finding, if in favor of the plaintiff for the recovery of the real property and in favor of the defendant for the counterclaim, shall require such defendant to pay to the plaintiff the value of the land as determined by such findings and the damages, if any recovered, for withholding the same and for waste committed upon such land by the defendant within sixty days from the rendition of such judgment, and in default of such payment by the defendant, that the plaintiff shall pay to the defendant the value of the improvements as determined by such finding, less the amount of any damages so recovered by plaintiff for withholding the property and for any waste committed upon such land by the defendant, and until such payment or tender and deposit in the office of the clerk of the court in which such action is pending, no execution or other process shall issue in such action to dispossess such defendant, his heirs or assigns.
- § 645, C. Civ. P. **§ 5914. Both parties have right of entry.** The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, may on motion upon notice by either party for good cause shown grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof and of any tunnels, shafts or drifts thereon for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.
- § 646, C. Civ. P. **§ 5915. Order for entry. Service.** The order must describe the property and a copy thereof must be served on the owner or occupant and thereupon such party may enter upon the property with necessary surveyors and assistants and make such survey and measurement, but if any unnecessary injury is done to the property he is liable therefor.
- § 647, C. Civ. P. **§ 5916. Purchaser may recover for waste.** When real property has been sold on execution the purchaser thereof, or any person who may have succeeded to his interest, may after his estate becomes absolute recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyances.
- § 648, C. Civ. P. **§ 5917. Alienation not to affect action.** An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person either before or after the commencement of the action.
- § 649, C. Civ. P. **§ 5918. Mining customs govern mining claims.** In actions respecting mining claims proof must be admitted of the customs, usages or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages or regulations, when not in conflict with the laws of this state and the United States, must govern the decision of the action.
- § 650, C. Civ. P. **§ 5919. Claimants on public land.** Any person settled upon the public lands belonging to the United States on which settlement is not expressly prohibited by congress, or some department of the general government, may maintain an action for any injuries done the same, also an action to recover the possession thereof in the same manner as if he possessed a fee simple title to said lands.

CHAPTER 31.

ACTION FOR NUISANCE, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY.

§ 5920. **Who may bring action of nuisance.** An action may be maintained by any person whose property is injuriously affected or whose personal enjoyment is lessened by a nuisance as defined in the civil code; and by the judgment the nuisance may be enjoined or abated as well as damages recovered. § 651, C. Civ. P. am'd.

§ 5921. **Waste. When actionable.** If a guardian, tenant for life or years, joint tenant or tenant in common of real property commits waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages, forfeiture of the estate of the party offending and eviction from the premises. § 652, C. Civ. P.

§ 5922. **When and to whom judgment given.** Judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice. § 653, C. Civ. P.

CHAPTER 32.

ACTION FOR THE SUPPORT OF MARRIED WOMEN.

§ 5923. **When maintainable.** Any married woman may maintain an action in the district court of the county in which she resides against her husband for failure on his part to provide for her support and the support of her minor children, if any, by said husband living with her. § 1, c. 167, 1890. am'd.

§ 5924. **Power of court to render judgment.** If it shall appear to the court upon the trial of such action that the husband is able to support or contribute to the support of his wife and said children, if any, and that he neglects or refuses to perform his duty in that respect, the court shall have power to render such judgment as to the support by said husband of his wife and said children as shall be equitable in view of the circumstances of both parties. § 2, c. 167, 1890. am'd.

§ 5925. **Practice.** The practice in such action shall conform as nearly as may be to the practice in actions for divorce. § 3, c. 167, 1890. am'd.

§ 5926. **What payments by husband compelled.** The court may in its discretion require the husband to pay any money necessary to enable the plaintiff to prosecute the action and for the support of the plaintiff and her children during its pendency.

§ 5927. **Security required. Receiver.** The court may require the husband to give reasonable security for making any payments

required under the provisions of this chapter and may enforce the same by the appointment of a receiver or by any remedy applicable to the case.

§ 4, c. 167, 1890.
am'd.

§ 5928. Modifying or vacating judgment. The judgment may be modified or vacated at any time upon the hearing of the parties.

CHAPTER 33.

ACTIONS AGAINST THE STATE.

§ 5929. When authorized. Where brought. Undertaking for costs. An action respecting the title to property, or arising upon contract may be brought in the district court against the state the same as against a private person. When such actions are not of a local nature they shall be brought in the county of Burleigh. The plaintiff at the time of commencing such action shall file an undertaking with sufficient surety to be approved by the clerk of court to the effect that he will pay any judgment for costs that may be rendered against him.

§ 5930. Claim presented and refused before action brought. No action upon a claim arising upon contract for the recovery of money only can be maintained against the state until the claim has been presented to the state auditor for allowance and allowance thereof refused. The neglect or refusal of the auditor to act on such claim for a period of ten days after its presentation for allowance shall be deemed a refusal to allow the claim.

§ 5931. How judgment collected. No execution shall issue against the state on any judgment, but whenever a final judgment against the state shall have been obtained in any action the clerk shall make and furnish to the state auditor a duly certified copy of such judgment and the auditor shall in due course draw his warrant upon the state treasurer for such amount and deliver the same to the person entitled thereto.

CHAPTER 34.

CONTEMPTS.

ARTICLE 1.—CRIMINAL CONTEMPTS.

§ 5932. Defined. Every court of record shall have power to punish as for a criminal contempt persons guilty of any of the following acts and no other:

1. Disorderly, contemptuous or insolent behavior committed during its sitting in its immediate view and presence and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Any breach of the peace, noise or other disturbance directly tending to interrupt its proceedings.

3. Willful disobedience of any process or order lawfully issued or made by it.

4. Resistance willfully offered by any person to the lawful order or process of the court.

5. The contumacious and unlawful refusal to be sworn as a witness; or after being sworn, to answer any legal and proper interrogatory.

6. The publication of a false or grossly inaccurate report of its proceedings: but no court can punish as a contempt the publication of a true, full and fair report of any trial, argument, decision or other proceeding therein.

§ 5933. Punishment for. Punishment for a contempt specified in the last section may be by fine, not exceeding two hundred and fifty dollars or by imprisonment not exceeding thirty days in the jail of the county where the court is sitting, or both, in the discretion of the court. When a person is committed to jail for the nonpayment of such fine, he must be discharged at the expiration of thirty days; but when he is also committed for a definite time, the thirty days must be computed from the expiration of the definite time.

ARTICLE 2. — CIVIL CONTEMPTS.

§ 5934. Defined. Every court of record has power to punish by fine and imprisonment, or either, a neglect or violation of duty or other misconduct by which a right or remedy of a party to a civil action or proceeding pending in the court may be defeated, impaired, impeded or prejudiced in the following cases:

1. An attorney, counselor, clerk, sheriff, coroner or other person in any manner duly elected or appointed to perform a judicial or ministerial service for a misbehavior in his office or trust, or for a willful neglect or violation of duty therein; or for disobedience to any lawful order or process of the court or of the judge thereof.

2. A party to an action or proceeding, for putting in fictitious bail, or a fictitious surety, or for any deceit or abuse of the process or proceedings of the court.

3. A party to an action or proceeding, an attorney, counselor or other person, for the nonpayment of a sum of money ordered by the court to be paid, in a case where by law execution cannot be awarded for the collection of such sum; or for any other disobedience to any lawful order, judgment or process of the court.

4. A person for assuming to be an attorney, or counselor or other officer of the court and acting as such without authority; for rescuing any property or person in the custody of an officer by virtue of any process or order issued by such court; for fraudulently and willfully preventing or disabling from attendance or testifying a witness or a party to an action or proceeding, or unlawfully detaining such witness or party while going to, remaining at or returning from the court where the action or proceeding is noticed for trial or hearing,

or is being tried or heard; or for any other unlawful interference with the proceedings therein.

5. A person subpoenaed as a witness for refusing or neglecting to obey the subpoena, or to attend, or to be sworn, or to answer as a witness.

6. A person summoned as a juror in any court, for improperly conversing with a party to an action or proceeding to be tried at that term, or with any other person, in relation to the merits of such action or proceeding; or for receiving a communication from any person in relation to the merits of such an action or proceeding without immediately disclosing the same to the court.

7. An inferior magistrate, judge, officer or tribunal, for proceeding contrary to law in a case or matter which has been removed from his jurisdiction to the court inflicting the punishment; or for disobedience to any lawful order or process of the latter court.

8. In any other case expressly authorized by the codes or statutes of this state, or where an attachment, or any other proceeding to punish for a contempt has been usually adopted and practiced in a court of record to enforce a civil remedy or to protect a right of a party to an action or proceeding in such court.

ARTICLE 3.—PRACTICE IN CONTEMPTS.

§ 5935. How punished when in presence of court. When the offense is committed in the immediate view and presence of the court or of the judge upon a trial or hearing it may be punished summarily. For that purpose an order must be made, stating the facts which constitute the offense and reciting that the same occurred in such immediate view and presence and plainly and specifically prescribing the punishment to be inflicted therefor.

§ 5936. When not in presence. When the offense is not so committed the court or judge must upon being satisfied by affidavit of the commission of the offense, either:

1. Make an order requiring the accused to show cause at a time and place therein specified why he should not be punished for the alleged offense; or,

2. Issue a warrant of attachment directed to the sheriff of any county where the accused may be found, commanding him to arrest the accused and bring him before the court or judge, either forthwith or at a time and place therein specified to answer for the alleged offense.

§ 5937. Order to show cause. Attachment. An order to show cause may be made in the action or proceeding in or respecting which the offense was committed, either before or after the final judgment or order therein, and is equivalent to a notice of motion; and the subsequent proceedings thereupon shall be taken in the action or proceeding as upon a motion made therein. In case an attachment is issued it shall be deemed an original special proceeding by the state as plaintiff against the accused as defendant.

§ 5938. Papers served on accused. A copy of the warrant and of the affidavit, or report of a referee upon which it is issued, must be served upon the accused when he is arrested by virtue thereof.

§ 5939. Indorsement on warrant of amount of undertaking required. When a warrant of attachment is issued the court or judge may in discretion by an indorsement thereon fix a sum in which the accused may give an undertaking for his appearance to answer.

§ 5940. Duty of sheriff when undertaking not given. If an indorsement is not made upon the warrant, or if such an indorsement is made and an undertaking is not given as prescribed in the next section, the sheriff after making the arrest must keep the accused in his custody, until the further direction of the court or judge. When from sickness or other cause the accused is physically unable to attend before the court or judge, that fact is a sufficient excuse to the sheriff for not producing him as required by the warrant. In that case the sheriff must produce him as directed by the court or judge after he becomes able to attend. The sheriff need not in any case confine the accused in prison or otherwise restrain him of his liberty, except so far as is necessary in order to secure his personal attendance.

§ 5941. Accused discharged from arrest on delivering undertaking. When an indorsement is made upon the warrant as prescribed in the last section but one, the accused must be discharged from arrest upon his executing and delivering to the sheriff at any time before the return day of the warrant an undertaking to the state in the sum specified in the indorsement with sufficient surety to the effect that he will appear on the return of such attachment and abide the direction of the court. If required by the sheriff, such surety must justify in the same manner as bail upon an arrest.

§ 5942. Procedure on return of warrant. When the accused is produced by virtue of a warrant, or appears upon the return of a warrant, or of an order to show cause the court or judge must, unless the accused admits the offense charged, cause interrogatories to be filed, specifying the facts and circumstances of the offense charged against him. The accused must make written answer thereto under oath within such reasonable time as the court or judge allows therefor and either party may produce affidavits or other proof contradicting or corroborating any answer. Upon the original affidavits, the answer and subsequent proofs the court or judge must determine whether the accused has committed the offense charged.

§ 5943. Final order directing punishment. If it is determined that the accused has committed the offense charged and, if it is a contempt defined in section 5934, that it was calculated to or actually did defeat, impair, impede or prejudice the rights or remedies of a party to an action or proceeding pending in the court or before the judge or a referee, the court or judge must make a final order accordingly, directing that the accused be punished by fine or imprisonment, or both, as the nature of the case requires. A warrant of commitment must issue accordingly.

§ 5944. Payment to party injured instead of fine. If an actual loss or injury has been produced to any party by the misconduct alleged, the court or judge shall order a sufficient sum to be paid by the offender to such party to indemnify him and to satisfy his costs and expenses instead of imposing a fine upon the accused; and in such case the payment and acceptance of such sum shall be an absolute bar to any action by the aggrieved party to recover damages for such injury or loss. When no such actual injury or loss has been

produced the fine shall not exceed two hundred and fifty dollars over and above the costs and expenses of the proceeding. A corporation may be fined as prescribed in this section.

§ 5945. Imprisonment until act performed. When the misconduct proved consists of an omission to perform an act or duty, which it is yet in the power of the offender to perform, he shall be imprisoned only until he has performed it and paid the fine imposed. In such a case the order and the warrant of commitment, if one is issued, must specify the act or duty to be performed and the sum to be paid. In every other case, when special provision is not otherwise made by law, the offender may be imprisoned for a reasonable time not exceeding six months, and until the fine, if any, is paid; and the order and the warrant of commitment if any, must specify the amount of the fine and the duration of the imprisonment.

§ 5946. Offender discharged when unable to endure imprisonment. When an offender, imprisoned as prescribed in this chapter, is unable to endure the imprisonment, or to pay the sum, or perform the act or duty required to be paid or performed in order to entitle him to be released, the court or judge may in discretion and upon such terms as justice requires make an order directing him to be discharged from the imprisonment.

§ 5947. Punishment no bar to criminal prosecution. A person punished as prescribed in this chapter may, notwithstanding, be prosecuted criminally for the same misconduct, if it is a public offense; but the court before which he is convicted must in forming its sentence take into consideration the previous punishment.

§ 5948. Failure to appear. Prosecution of undertaking. When a person arrested by authority of a warrant of attachment has given an undertaking for his appearance as prescribed in this chapter and fails to appear on the return day of the warrant, the court may either issue another warrant or make an order directing the undertaking to be prosecuted or both.

§ 5949. By whom prosecuted. Extent of recovery. The order directing the undertaking to be prosecuted may in the discretion of the court or judge direct the prosecution thereof by and in the name of any party aggrieved by the misconduct of the accused. In such a case the plaintiff may recover damages to the extent of the loss or injury sustained by him by reason of the misconduct together with the costs and expenses of prosecuting the proceedings in which the warrant was issued, not exceeding the sum specified in the undertaking.

§ 5950. When prosecuted in name of state. Application of proceeds. If no party is aggrieved by the misconduct of the accused the court must, and in any case when the court thinks proper so to direct, it may direct the prosecution of the undertaking by the attorney general, or by the state's attorney of the county in which it was given, in the name of the state. In an action brought pursuant to such direction the state is entitled to recover the entire sum specified in the undertaking. Out of the money collected the court which directed the prosecution must direct that the person at whose instance a warrant was issued be paid such a sum as it thinks proper to satisfy the costs and expenses incurred by him and to compensate him for the loss or injury sustained by him by reason of the misconduct. The residue of the money must be paid into the treasury of the state to the credit of the school fund.

§ 5951. When sheriff liable for insufficient surety. After the return of an execution unsatisfied, issued upon a judgment, rendered in an action upon the undertaking, an action to recover the amount of the judgment may be maintained against the sheriff, when it appears that at the time when the undertaking was given, the surety was insufficient and the sheriff had reasonable grounds to doubt his sufficiency. Such an action may be maintained by the plaintiff in whose favor the judgment was recovered. If the state was plaintiff the action must be prosecuted by the attorney general or the state's attorney; and any money collected therein must be disposed of as prescribed in the last section.

§ 5952. Procedure to punish contempt before referee. The commission of any of the offenses, which constitute contempt of court, upon the trial of an action or issue by a referee appointed by the court shall be deemed a contempt of the court appointing such referee and the same may be punished by the court in like manner and upon the same proceedings as in this chapter provided, except that the offense may be presented to the court by a report of the referee instead of by affidavit.

§ 5953. How contempts of officers, etc., punished. When a witness fails to attend for examination when duly required so to do before a notary public or any other officer, board or tribunal authorized by law to require his attendance for examination, or refuses to be sworn, or to answer as a witness, such notary public, officer, board or tribunal shall certify such fact to the judge of the district court of the judicial district in which the witness resides or may be, who must thereupon by order require such witness to attend before him at a time and place to be specified in such order for examination. Upon the return day of such order the examination of the witness shall be conducted before the judge and for the failure of the witness to attend or his refusal to do any act required of him by law he may be punished as for a contempt upon the same proceedings as are in this chapter provided.

§ 5954. How appeals taken to the supreme court. Appeals may be taken to the supreme court from any final order adjudging the accused guilty of contempt and upon such appeal the supreme court may review all the proceedings had and affidavits and other proof introduced by or against the accused. For the purpose of reviewing questions as to the sufficiency of the evidence a statement of the case may be prepared and settled within the time and in the manner provided in article 8 of chapter 10 of this code. Such appeal shall be taken, except as in this section otherwise provided in the manner prescribed in chapter 14 of this code.

To render such appeal effectual:

1. If the appellant has been adjudged guilty of a criminal contempt, an undertaking must be executed to the state of North Dakota on the part of the appellant in the sum of five hundred dollars by at least two sureties to the effect that if the order appealed from, or any part thereof, is affirmed or the appeal is dismissed, the appellant will pay the amount directed to be paid by such order, or the part of such amount as to which the order is affirmed and if such order also directs that appellant be imprisoned, that he will surrender himself in execution of the order and also pay the costs adjudged against him on such appeal; or,

2. If, of a civil contempt, a like undertaking must be executed in double the amount of the fine imposed and in no case less than two hundred and fifty dollars to the same effect as prescribed in subdivision 1 of this section; or,

3. If the appellant does not desire a stay of the execution of the order appealed from, a like undertaking must be executed in the sum of two hundred and fifty dollars to the effect that appellant will pay the costs of the appeal if the judgment is affirmed wholly, or in part, or the appeal is dismissed.

Unless the undertaking provided for in subdivision 1 or 2 of this section, as the case may require, is executed on the part of the appellant the execution of the order appealed from shall not be stayed.

CHAPTER 35.

EMINENT DOMAIN.

§ 14, Const.

§ 5955. Defined. How exercised. Eminent domain is the right to take private property for public use. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner. And in case such property is so taken by a person, firm or private corporation no benefit to accrue from the proposed improvement shall be allowed in ascertaining the compensation to be made therefor. Such compensation shall in all cases be ascertained by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.

§ 5956. Exercised for what public uses. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of this state.

3. Public buildings and grounds for the use of any county, incorporated city, village, town or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city, village or town; or for draining any county, incorporated city, village or town; raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels; roads, streets and alleys and all other public uses for the benefit of any county, incorporated city, village or town, or the inhabitants thereof which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, by-roads, plank and turnpike roads, railroads and street railways; canals, ditches, flumes, aqueducts and pipes for public transportation, supplying mines and for irrigating purposes, draining and reclaiming lands.

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also milldams.

6. By-roads leading from highways to residences and farms.

7. Telegraph and telephone lines.

8. Sewerage of any incorporated city, or of any village or town, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or to any college or university.

9. Cemeteries and public parks.

§ 5957. What estate subject to be taken. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for a public use.

§ 5958. What property may be taken. The private property which may be taken under this chapter includes:

1. All real property belonging to any person.

2. Lands belonging to this state; or to any county, incorporated city, village or town not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges, ferries and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in section 5956 and any and all structures and improvements thereon and the lands, held or used in connection therewith shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon. They shall also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

§ 5959. What must appear before property taken. Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

§ 5960. Entry for making surveys, etc. In all cases when land is required for public use the person or corporation, or his or its agents, in charge of such use may survey and locate the same; but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the

provisions of section 5964. Whoever may be in charge of such public use may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owner of the land except for injuries resulting from negligence, wantonness or malice.

§ 5961. Proceedings by civil action. All proceedings under this chapter must be prosecuted by civil action brought in the district court of the county in which the property, or some part thereof, is situated.

§ 5962. What complaint must contain. The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way is sought, the complaint must show the location, general route and termini and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

§ 5963. Who may defend. All persons in occupation of, or having or claiming an interest in any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him in like manner as if named in the complaint.

§ 5964. Power of court. The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 5960.

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

§ 5965. Assessment of damages. The jury, or court or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.

3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.

4. If the property is taken or damaged by the state or a public corporation, separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed under subdivisions 2 and 3, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the portion taken.

5. As far as practicable compensation must be assessed separately for property actually taken and for damages to that which is not taken.

§ 5966. When right to damages accrues. For the purpose of assessing compensation and damages the right thereto shall be deemed to have accrued at the date of the trial and its actual value at that date shall be the measure of compensation for all property to be actually taken, and the basis of damages to the property not actually taken, but injuriously affected, in all cases when such damages are allowed as provided in section 5965. No improvements put upon the property subsequent to the date of the service of the summons shall be included in the assessment of compensation or damages.

§ 5967. When title defective. If the title acquired is found to be defective from any cause the plaintiff may again institute proceedings to acquire the same as in this chapter prescribed.

§ 5968. When judgment paid. The plaintiff must within thirty days after final judgment pay the sum of money assessed.

§ 5969. Payment or deposit. Proceedings annulled. Payment may be made to the defendant entitled thereto, or the money may be deposited in court for the defendant, and be distributed to those entitled thereto. If the money is not so paid or deposited, the defendant may have execution as in civil actions, unless execution is stayed by order of the court pending a motion for a new trial or on appeal; and if the money cannot be made on execution, the court upon a showing to that effect must set aside and annul the entire proceedings.

§ 5970. Final order. Filing. When payments have been made as required in the last two sections the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the register of deeds of the county and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

§ 5971. When possession taken. How money paid defendant. Acceptance, abandonment of defenses. At any time after the entry of judgment, whenever the plaintiff shall have paid to the defendant, or into court for the defendant, the full amount of the judgment, the district court in which the proceeding was tried may upon notice of not less than three days authorize the plaintiff to take possession of and use the property during the pendency of and until the final conclusion of the litigation and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof.

The defendant, who is entitled to the money paid into court for him upon judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. It shall be the duty of the court, or a judge thereof, upon application being made by such defendant to order and direct that the money so paid into court for him be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor and an abandonment of all defenses to the action or proceeding except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. The payment of the money into court as hereinbefore provided for shall not discharge the plaintiff from liability to keep the said fund full and without diminution; but such money shall be and remain as to all accident, defalcations or other contingencies as between the parties to the proceedings at the risk of the plaintiff, and shall so remain until the amount of the compensation or damages is finally settled by judicial determination and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until he is authorized or required by order of court to take it. If for any reason the money shall at any time be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation is finally brought to an end, and until paid over or made payable to the defendant by order of the court, as above provided, and until such time or times the clerk of court shall be deemed to be the custodian of the money and shall be liable to the plaintiff upon his official bond for the same, or any part thereof, in case it is for any reason lost, or otherwise abstracted or withdrawn. The court may order the money to be deposited in the state treasury and in such case it shall be the duty of the state treasurer to receive all such moneys, duly receipt for and safely keep the same in a special fund to be entered on his books as a condemnation fund for such purpose, and for such duty he shall be liable to the plaintiff upon his official bond. The state treasurer shall pay out such money so deposited in such manner and at such times as the court or judge thereof may by order direct. In all cases when a new trial has been granted upon the application of the defendant and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him.

§ 5972. Rules of practice. Except as otherwise provided in this chapter the provisions of this code relative to civil actions are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

§ 5973. New trials and appeals. The provisions of this code relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this chapter apply to the proceedings mentioned in this chapter; provided, that upon the payment of the damages assessed the plaintiff shall be entitled to enter into, improve and hold possession of the property sought to be condemned as provided in section 5971 and devote the same to the public use in question; and no motion for a new trial or appeal shall after such payment in any manner retard the contemplated improvement. Any money which shall have been deposited, as provided in

section 5971, shall be applied to the payment of the recovery upon a new trial and the remainder, if there is any, shall be returned to the plaintiff.

CHAPTER 36.

DEATH BY WRONGFUL ACT.

§ 5974. **When action for maintainable.** Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation or company which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

§ 5975. **Measure of recovery.** In such actions the jury shall give such damages as they think proportionate to the injury resulting from the death to the persons entitled to the recovery.

§ 5976. **Who may bring action.** The action shall be brought by the following persons in the order named:

1. The surviving husband or wife, if any.
2. The surviving children, if any.
3. The personal representative.

If any person entitled to bring the action refuses or neglects so to do for a period of thirty days after demand of the person next in order, such person may bring the same.

§ 5977. **Recovery exempt from decedent's debts.** The amount recovered shall not be liable for the debts of the decedent, but shall inure to the exclusive benefit of his heirs at law in such shares as the judge before whom the case is tried shall fix in the order for judgment, and for the purpose of determining such shares the judge may after the trial make any investigation which he deems necessary.

§ 5978. **Action not abated by death.** The action shall not abate by the death of either party to the record. If the plaintiff dies pending the action the person next in order, entitled to bring the action, shall by order of the court be made plaintiff therein.

§ 5979. **Compromise of action.** The person entitled to bring the action may compromise the same, or the right thereto, and such compromise shall be binding upon all persons authorized to bring the action or to share in the recovery.

CHAPTER 37.

ARBITRATION.

§ 5980. When authorized. Persons capable of contracting may submit to the decision of one or more arbitrators any controversy which might be the subject of a civil action between them, except the question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

§ 5981. Submission in writing. The submission to arbitration must be in writing and acknowledged by the parties thereto in the same manner as a conveyance of real property and may fix the time on or before which the award shall be made and provide that judgment may be entered upon the award by the district court in and for a specified county.

§ 5982. Powers of arbitrators. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties and to make the award thereon. All the arbitrators must meet and act together during the investigation; but when met a majority may determine any question.

§ 5983. Oath of. Before acting the arbitrators must be sworn before an officer authorized to administer oaths faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy and to make a just award according to their understanding.

§ 5984. Attendance of witnesses compelled. Witnesses may be compelled to appear before such arbitrators by subpoena to be issued by any justice of the peace, in the same manner and with like effect, and subject to the same penalties for disobedience, as in cases of trials before justices of the peace.

§ 5985. How award executed. When filed. The award must be in writing signed by the arbitrators or a majority of them and acknowledged in the same manner as a conveyance of real property. If the submission provides for the entry of judgment upon the award, the arbitrators shall file the submission together with their award in the office of the clerk of the district court of the county specified in the submission and notify each of the parties to the arbitration thereof in writing. If the submission does not provide for the entry of judgment upon the award the arbitrators shall deliver a copy of the award to each of the parties to the arbitration.

§ 5986. Motion to affirm award. Any party to the submission at any time within one year after the award is filed, and upon eight days' notice to the adverse party may move the court designated in the submission to affirm the award and the same shall be affirmed accordingly, unless a motion is made to modify or vacate the award in which case the latter motion shall first be disposed of.

§ 5987. To vacate. Grounds. Any party to such submission may move the court designated therein to vacate the same upon either of the following grounds:

1. That such award was procured by corruption, fraud or other undue means.

2. That there was evident partiality or corruption in the arbitrators, or either of them.

3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or refusing to hear any evidence pertinent and material to the controversy, or for any other misbehavior of such arbitrators by which the rights of any party shall have been prejudiced.

4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award on the subject matter submitted was not made.

§ 5988. To modify. Grounds. Any party to such submission may also move the court designated therein, to modify or correct such award in the following cases:

1. When there is evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in such award.

2. When the arbitrators shall have awarded upon some matter not submitted to them, not affecting the merits of the decision upon the matters submitted.

3. When the award shall be imperfect in some matter of form not affecting the merits of the controversy and when, if it had been a verdict, such defect could have been amended or disregarded by the court according to the provisions of law.

§ 5989. Power of court on such motions. On such application the court may vacate such award in any of the cases hereinbefore specified, and if the time within which such award shall have been required to be made by the submission, has not expired, may in their discretion direct a rehearing by the arbitrators; and in the cases herein specified the court may modify and correct such award, so as to effect the intent thereof and promote justice between the parties.

§ 5990. Judgment. Costs. Upon such award being affirmed or modified the court shall render judgment in favor of the party to whom any sum of money or damages shall have been awarded, that he recover the same; and if the award shall have ordered any act to be done by either party, judgment shall be entered, that such act be done according to such order. The costs of the proceedings shall be taxed as in actions, and if no provision for the fees and expenses of the arbitrators shall have been made in the submission, the court shall make the same allowance as is provided by law for referees; but no costs shall be taxed for any other services or expenses prior to such application.

§ 5991. How judgment entered. The judgment of the court on such award shall be entered in the judgment book at length as other judgments of said court and the clerk of the court shall immediately after the entry of such judgment attach to the submission the award of the arbitrators and a copy of the judgment of the court and the same shall constitute the judgment roll.

§ 5992. Subject to same provisions as other judgments. Such judgment roll shall be filed and judgment docketed as in other cases, shall have the same force and effect in all respects, be subject to all the provisions of law in relation to judgments in actions and may in like manner be reviewed by the supreme court on appeal; and execution shall issue thereupon against the property or person of any party against whom a recovery shall be had in all respects as upon other judgments.

§ 5993. Record on appeal. Power of supreme court. When an appeal shall be taken from such judgment, the original affidavits upon which any application in relation to such award was founded and all other affidavits and papers relating to such application shall be annexed to, form a part of and be transmitted with the record of the judgment, unless the court shall order copies thereof to be returned; and the supreme court shall reverse, modify, amend or affirm such judgment according to justice.

§ 5994. How judgment enforced. When by such judgment any party shall be required to perform any act other than the payment of money, the court rendering such judgment shall enforce the same in the manner provided for enforcing judgments of a similar nature in other cases.

§ 5995. Costs on setting aside. If upon application made pursuant to the foregoing provisions the court shall vacate and set aside any such award, costs shall be awarded to the prevailing party; and judgment may be rendered therefor and enforced by execution.

§ 5996. Appeal from an order vacating. Upon any such order vacating an award the party aggrieved may appeal to the supreme court, on which appeal the submission and award and all affidavits and papers used on such application shall be transmitted to the supreme court, unless the court shall order copies thereof returned; and the court shall proceed to affirm or reverse such order as shall be just.

§ 5997. Procedure when reversed. If such order is reversed the proceedings shall be remitted to the court from which they were removed to proceed thereon; or the supreme court may modify or affirm the award in the same manner and with like effect, as if the application for that purpose had been originally made to such court.

§ 5998. Action upon award not affected. Nothing in this chapter shall be construed to impair or affect any action upon an award or upon any bond or other engagement to abide by an award.

§ 5999. Liability for costs when submission revoked. Whenever any submission to arbitration shall be revoked by a party thereto before the publication of an award, the party so revoking shall be liable to an action by the adverse party to recover all costs and expenses incurred and damages which he may have sustained in preparing for such arbitration; but neither party shall have power to revoke the powers of the arbitrators after the cause shall have been finally submitted to them upon a hearing of the parties for their decision.

§ 6000. Same when submission in bond. If the submission so revoked was contained in the condition of any bond, the obligee in such bond shall be entitled to prosecute the same in such manner as other bonds with condition other than for the payment of money and to assign such revocation as a breach thereof; and for such breach he shall recover as damages the costs and expenses incurred and the damages sustained by him in preparing for such arbitration.

CHAPTER 38.

INSOLVENCY.

ARTICLE 1.—GENERAL PROVISIONS.

§ 6001. **How debtor discharged.** Insolvent debtors residing in this state may be discharged from their debts in the manner prescribed in and upon compliance with the provisions of this chapter.

§ 6002. **What deemed commencement of proceedings.** The filing of the petition for an adjudication in insolvency, either by the debtor in his own behalf, or by any creditor against the debtor, shall be deemed the commencement of proceedings in insolvency.

§ 6003. **Deemed matters of record. Record not required.** The proceedings in all cases of insolvency shall be deemed matters of record, but the same shall not be required to be recorded at length, but shall be carefully filed, copied and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, copied in books provided for that purpose, which shall be open to public inspection. Copies of such records duly certified under the seal of the court shall in all cases be presumptive evidence of the facts therein stated.

ARTICLE 2.—VOLUNTARY INSOLVENCY.

§ 6004. **When authorized. Petition.** Any person residing in this state and owing debts provable in insolvency to the amount of at least five hundred dollars may apply by petition to the district court of the county in which he resides, or of the county to which the county in which he resides is attached for judicial purposes, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, except such as is by law exempt from execution, and his desire to obtain a discharge from his debts and shall annex to his petition a schedule and affidavit in compliance with the next two sections. The filing of such petition shall be an act of insolvency and such petitioner shall be adjudged an insolvent.

§ 6005. **Schedule. Contents.** Such schedule must contain:

1. A true and complete list of all his creditors.
2. The place of residence of such creditors, if known to the debtor; and if not known, that fact shall be stated.
3. The sum owing to each creditor and the nature of each demand, whether arising on written security, on account or otherwise.
4. The true cause and consideration of such indebtedness in each case and the place where such indebtedness accrued.
5. A statement of any existing judgment, mortgage or collateral or other security for the payment of such debts.
6. A full and true inventory of all the estate, both real and personal, and of all choses in action, debts due and moneys in the hands of such debtor, whether the property is claimed as exempt or not, of the incumbrances existing thereon and of all the books, vouchers and securities relating thereto.

§ 6006. Affidavit to petition. An affidavit in the following form shall be annexed to such petition and schedule and shall be sworn to and subscribed by the debtor:

I,....., do swear (or affirm as the case may be) that the schedule, which is annexed to my petition and herewith delivered, is in all respects just, true and complete and that I have not at any time or in any manner whatever disposed of or made over any part of my estate for the future benefit of myself or family, or in order to defraud any of my creditors; and that I have in no instance created or acknowledged a debt for a greater sum than I honestly or truly owed and that I have not paid, secured to be paid or in any way compounded with any of my creditors with a view fraudulently to obtain the prayer of my petition.

§ 6007. Notice to creditors. Upon the filing of such petition, schedule and affidavit the court shall make an order directing that notice be given to all the creditors whose names are contained in the schedule filed with the debtor's petition, or are afterwards furnished by the debtor. The contents of such notice and the manner of serving the same are prescribed in article 4 of this chapter.

§ 6008. Amendment of schedule. Every person voluntarily petitioning under the provisions of this chapter to be adjudged an insolvent shall be at liberty from time to time upon oath to amend and correct his schedule so that the same shall conform to the facts.

ARTICLE 3. — INVOLUNTARY INSOLVENCY.

§ 6009. When proceedings authorized. Any person residing in this state and owing debts provable in insolvency to the amount of at least five hundred dollars:

1. Who departs from this state with intent to defraud his creditors or, being absent, remains absent with such intent; or,

2. Who conceals himself to avoid the service of legal process in any action for the recovery of a debt or demand, provable in insolvency; or,

3. Who conceals any of his property to avoid its being seized on legal process; or,

4. Who makes any assignment, gift, sale, conveyance or transfer of his property, rights or credits either within this state or elsewhere with intent to delay, defraud or hinder his creditors; or,

5. Who, being insolvent or in contemplation of insolvency, makes any payments, gift, grant, sale, conveyance or transfer of property, rights or credits, or procures or suffers a judgment against himself or procures or suffers his property to be taken on legal process with intent to give preference to one or more of his creditors or to any person or persons who are or may be liable for him as indorsers, sureties or otherwise, or with the intent by such disposition of his property to defeat or delay the operation of this chapter; or,

6. Who, being insolvent, has suffered execution for five hundred dollars or more to be returned unsatisfied or, being a merchant or tradesman, has suspended and not resumed payment of commercial paper for thirty days for five hundred dollars or more, unless the party or parties holding such paper have in writing waived the right to proceed under this subdivision, shall be deemed to have committed an act of insolvency and shall become liable to be adjudged an insolvent.

§ 6010. Petition. Amendment. Proceedings in insolvency may be instituted by the filing of a verified petition of one or more creditors, the aggregate of whose provable debts amounts to at least four hundred dollars, against any debtor residing in this state owing debts to the amount of at least five hundred dollars, who has committed an act of insolvency as defined in section 6009, provided such petition is brought within six months after the parties in interest shall have had an opportunity to be advised of the fact that an act of insolvency has been committed. The petition may from time to time be amended and corrected by leave of the court before which the proceedings are pending, so that the same shall conform to the facts.

§ 6011. Undertaking. The petition shall be accompanied by an undertaking with sufficient surety, to be approved by the clerk of the court, in the sum of at least five hundred dollars, conditioned that if the debtor shall not be declared an insolvent, the petitioner will pay all costs and damages, including a reasonable attorney's fee, that the debtor may sustain by reason of the filing of the petition. The court may upon motion direct the filing of an additional undertaking with sufficient surety when deemed necessary.

§ 6012. Order to debtor to show cause. Injunction. Upon the filing of the petition authorized by the preceding section, if it appears therefrom that sufficient grounds exist, the court shall make an order requiring the debtor to show cause at a time and place to be specified in the order why the prayer of the petition should not be granted. The court may also by injunction restrain the debtor and any other person in the meantime from making any transfer or disposition of any part of the debtor's property and from any interference therewith.

§ 6013. When property seized and debtor arrested. At the time of the filing of the petition in insolvency either by the debtor or a creditor, or at any time thereafter, if it shall appear that there is probable cause for believing that the debtor is about to leave the state, or to remove or conceal his property or any evidence of his property, or to make any fraudulent conveyance or disposition thereof, or that the best interests of the estate demand such action, the court may issue a warrant to the sheriff, commanding him to arrest and safely keep the alleged debtor, unless he shall give an undertaking to the satisfaction of the court for his appearance from time to time as required by the court until its decision upon the petition or until its further order, and forthwith to take possession provisionally of all the property of the debtor and safely keep the same until the further order of the court, or to take possession of the property as aforesaid without arresting the debtor.

§ 6014. Service on debtor. A copy of the petition and order to show cause shall be served on the debtor. The service shall be made in the same manner as is prescribed for the personal service of a summons or, if such service cannot conveniently be made, in such manner as the court may by order direct. No further proceedings, unless the debtor appears and consents thereto, shall be had until proof has been made of the service of the order and petition; and if such proof is not given on the return day of such order, the proceedings shall be adjourned and an order made that such order and petition be forthwith served.

§ 6015. Proceedings continued by another creditor. If the petitioning creditor does not appear and proceed on the return

day or adjourned day, the court may upon the petition of another creditor to the required amount proceed to adjudicate on such petition without requiring a new service of the order and petition.

§ 6016. Answer of debtor. How issues tried. On such return day or adjourned day, if the order and petition have been duly served or service thereof is waived by the appearance of the debtor, the debtor may answer the petition. Such answer shall contain a specific denial of the material allegations of the petition controverted by him and shall be verified in the same manner as pleadings in civil actions. The court shall proceed immediately to try the issues so raised without a jury, unless the debtor at the time of filing his answer demands in writing a trial by jury. Upon a hearing before the court affidavits or other proof may be used as evidence.

§ 6017. Procedure on demand for jury. If the debtor demands a trial by jury, the court may adjourn the proceedings to the next term of the district court at which a jury will be in attendance; or may by order direct that eighteen jurors be drawn in the same manner as petit jurors are drawn from the jury list of the last preceding term of the district court, and that the jurors so drawn be summoned by the sheriff to attend upon the court at a time to be fixed in the order. At the time so fixed a jury of twelve shall be drawn from the persons so summoned in the same manner as jurors are drawn for the trial of civil actions and the provisions of law relating to the selecting, summoning and drawing of jurors shall be applicable to such proceedings. The issues raised by the petition and answer shall be tried in the same manner as issues in civil actions.

§ 6018. When proceedings dismissed. If upon such hearing or trial the debtor proves to the satisfaction of the court or jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens on his property, in case the existence of such liens was the sole ground of the proceeding, the proceedings shall be dismissed and judgment shall be entered in favor of the debtor against the petitioner for costs.

§ 6019. When debtor adjudged insolvent. If upon the hearing or trial the facts set forth in the petition are found to be true or, if upon default made by the debtor to appear pursuant to the order, due proof of service thereof is made, the court shall adjudge the debtor to be an insolvent.

§ 6020. Order requiring schedule. Amendment of. The court shall thereupon make an order requiring the insolvent forthwith, or within such number of days not exceeding three after the date of the order or notice thereof as shall by the order be prescribed, to make and deliver or transmit by mail postage paid to the clerk of the court a schedule as required by section 6005 and verified by the oath of the debtor. Such debtor shall be allowed from time to time upon oath to amend or correct his schedule of creditors and property so that the same shall conform to the facts. If the insolvent is absent or cannot be found in this state, such schedule shall be prepared by some person to be appointed by the court for that purpose according to the best information he can obtain.

§ 6021. How copy of the adjudication served. If the debtor has failed to appear in person or by attorney, a copy of the adjudication shall be forthwith served on him in the manner provided for the service of the order to show cause.

ARTICLE 4. — PROCEEDINGS TO REALIZE THE ESTATE FOR CREDITORS.

§ 6022. **Notice of insolvency.** Upon an adjudication that a debtor is an insolvent either upon his own petition or upon the petition of his creditors a notice shall forthwith be given by the clerk of the district court substantially as follows:

NOTICE OF INSOLVENCY.

Notice is hereby given that an adjudication of insolvency has been made against.....; and that the payment of any debts and the delivery of any property belonging to such debtor to him, or for his use, and the transfer of any property by him are forbidden by law.

.....
Clerk of the district court in and for the
county of....., North Dakota.

§ 6023. **Notice of election of assignee.** At the same time the clerk of the district court shall give notice of a meeting of the creditors to choose an assignee, the time for which shall be fixed by order of the court, which notice shall be in the following form:

ELECTION OF ASSIGNEE.

Notice is hereby given that a meeting of the creditors of....., who has been adjudged an insolvent, will be held at the courthouse in the city of.... in the county of..... in the state of North Dakota at.... o'clock.... M. on the..... day of..... 189.. for the purpose of choosing one or more assignees of the estate of said insolvent.

.....
Clerk of the district court in and for the
county of....., North Dakota.

§ 6024. **Manner of serving foregoing notices.** The notices mentioned in the last two sections shall be published four times, once in each week for four successive weeks, in a newspaper published in the county in which the adjudication is made, if there is one, and if not, then in a newspaper published at the seat of government. A copy of the notice of election of an assignee shall also be forthwith served personally or by mail on each creditor named in the schedule, if such creditor's residence or post office address is given in the schedule. The expense of the clerk in giving such notices shall be paid by the assignee out of the estate.

§ 6025. **Choosing assignee before time fixed.** At any time after an adjudication in insolvency the creditors named in the schedule and any other creditors, who may appear, may choose an assignee in the manner herein provided without waiting for the expiration of the time fixed in the notice and thereupon publication of the notice must be discontinued.

§ 6026. **Meeting of creditors.** At the meeting of the creditors the judge of the court shall preside, and the clerk of the court shall attend and keep a minute of the deliberations of the creditors and of the election of an assignee and enter the same upon his records;

if it appears that the notice to creditors has not been given as required by law, the meeting shall forthwith be adjourned and a new notice be given as required unless all the creditors have appeared as hereinbefore provided.

§ 6027. Creditor may act by attorney. Any creditor may act at all meetings and proceedings in insolvency by his attorney the same as though personally present.

§ 6028. Time and method of electing assignee. The creditors shall at the first meeting held after due notice or appearance choose one or more assignees of the property of the debtor; the choice to be made by the greater part in value of the creditors, who have proved their debts and are present or represented at such meeting. If no choice is made by the creditors at the meeting, the court shall appoint one or more assignees. If an assignee so chosen or appointed fails within five days to express in writing his acceptance of the trust, the court may fill the vacancy.

§ 6029. Who may vote or be assignee. No person who has received any preference contrary to the provisions of this chapter shall vote for or be eligible as assignee; but no title to property, real or personal, sold, transferred or conveyed by an assignee shall be affected or impaired by reason of his ineligibility.

§ 6030. Undertaking of assignee. Failure to give. The assignee shall give a good and sufficient undertaking in such sum as the court directs to the state of North Dakota, conditioned for the faithful performance and discharge of his duties, which undertaking shall be approved by the clerk of the court and filed with the record of the case, and shall inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the undertaking within ten days after notice of his appointment, the court shall remove him and a new assignee shall be chosen by the creditors at a meeting called for that purpose upon notice to the creditors as hereinbefore provided.

§ 6031. Grounds for removing assignee. The court may after hearing upon not less than three days' notice to the assignee remove him, if it appears upon the complaint of any person interested in the estate, that the assignee has fraudulently received, concealed, embezzled or conveyed any of the money, goods, effects or property of the debtor or has been interested in any action in relation to the said estate for the purpose of securing to himself a preference or priority over the other creditors, or has in his possession or control any portion of the estate with intent to appropriate the same unlawfully to his own use, or has been guilty of any fraudulent act in relation to the same.

§ 6032. Same. The court may also remove an assignee, who, having removed from the state, unreasonably refuses and neglects to obey any lawful order of the court or to settle his accounts or otherwise to discharge his duties.

§ 6033. Assignee may resign. An assignee may with the consent of the court resign his trust and be discharged therefrom.

§ 6034. How vacancies filled. Vacancies caused by death or otherwise in the office of assignee shall be filled by the creditors in the same manner as in the original choice of an assignee at a regular meeting or at a meeting called for the purpose with such notice thereof in writing to all known creditors as the court shall direct.

§ 6035. From what resignation no release. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successor, nor affect his liability or that of the sureties on his undertaking.

§ 6036. Clerk to execute assignment. Levy dissolved. As soon as an assignee is appointed and qualified the clerk of the court shall by an instrument under his hand and the seal of the court assign and convey to the assignee all the property, real and personal, of the debtor with all his deeds, books and papers relating thereto, except such property as is by law exempt from execution, and such assignment shall relate back to the commencement of the proceedings in insolvency and by operation of law shall vest the title to all such property, both real and personal, in the assignee, although the same is then held under any process as the property of the debtor and shall dissolve any levy made under such process within sixty days next preceding the commencement of the insolvency proceedings. Such assignment shall be approved by the court as to its form and manner of execution and shall be recorded in the office of the register of deeds of every county in which any real estate conveyed thereby is situated.

§ 6037. Debtor's exemptions. The debtor shall be allowed such exemptions as are provided for by law and shall be permitted to use and occupy his homestead, household furniture and absolute exemptions until his homestead and exemptions shall have been selected in the manner hereinafter prescribed. Insurances upon the life of a debtor do not pass to the assignee by the assignment, unless the debtor by an instrument in writing shall expressly consent thereto. No property held by the insolvent in trust shall pass by the assignment.

§ 6038. Assignee may redeem and tender performance. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, pledge or lien upon any property of the debtor, whenever payable, and to tender due performance of the conditions thereof or to sell the same subject to such mortgage, lien or other incumbrance.

§ 6039. Authority of assignee as to actions. The assignee shall have like remedy to recover all the property, debts and effects in his own name as the debtor would have had if no assignment had been made; if at the time of the assignment an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be permitted to prosecute the action in his own name in like manner and with like effect as if it had been originally commenced by him. No action pending in the name of the assignee shall be abated by his death or removal; but on motion of a surviving, remaining or new assignee, as the case may be, he shall be permitted to prosecute the action in like manner and with like effect as if it had been originally commenced by him. In actions prosecuted by the assignee the assignment made as hereinbefore provided shall be conclusive evidence of his authority.

§ 6040. Embezzlement by third person. If any person before the assignment is made, having notice of the commencement of proceedings in insolvency, embezzles or disposes of any of the moneys, goods, chattels or effects of the insolvent, he is chargeable

therewith and liable to an action by the assignee for double the value of the property so embezzled or disposed of, to be recovered for the benefit of the estate.

§ 6041. Remedies to obtain property embezzled, etc. The same penalties, forfeitures and proceedings by citation, examination and commitment shall be maintainable on the part of the assignee in the district court against persons suspected of having concealed, embezzled, conveyed away or disposed of any property of the debtor, or of having possession or knowledge of any deeds, conveyances, bonds, contracts or other writings which relate to any interest of the debtor in any real or personal estate as provided in case of the estates of deceased persons in sections 6378 and 6379 of the probate code.

§ 6042. When assigned claims no defense to action by assignee. Drafts, bills of exchange, promissory notes, claims, demands and causes of action, which within six months before the filing of the petition by or against a debtor are assigned, transferred, conveyed or delivered to any person indebted or liable to the debtor, shall not be set off or pleadable in any action by the assignee to recover such debt or liability; but the assignee may recover the same, notwithstanding such draft, bill of exchange, promissory note, claim, demand or cause of action, if the person to whom the same are so assigned, transferred, conveyed or delivered has at the time of such assignment, transfer, conveyance or delivery reasonable cause to believe the debtor insolvent.

§ 6043. Notice of appointment of assignee. The assignee shall immediately give notice of his appointment by publishing notice thereof three times, once in each week for three successive weeks, in such newspaper as shall for that purpose be designated by the court.

§ 6044. Inventory of estate. The assignee shall immediately make and return upon oath into court a true and complete inventory of all the property of the debtor, real and personal, whether claimed as exempt or not, and of all debts due to the debtor or any other person for his use, of all his rights of action for property, real or personal, and all his rights of redeeming property, which the assignment vests in such assignee and which have come to his possession or knowledge; and the property comprised in such inventory shall be appraised in the same manner as the estates of deceased persons are required by law to be appraised, and the district court shall make all orders necessary for that purpose, and such appraisement shall be made and filed with the clerk of the district court within five days after the appointment of the appraisers, or such further time as the court may allow. As soon as the inventory and appraisement are filed the assignee shall serve written notice of the filing of the same upon the debtor or other person authorized by law to select the homestead and exemptions and require him within ten days from the date upon which such notice is served to select his homestead and exemptions at the value fixed in the appraisement.

§ 6045. Property accounted for at appraised value. The assignee shall account for all the property and effects of the debtor that vest in him by the assignment at the appraisement, except as herein provided. He shall make no profit by the increase and sustain no loss by the decrease or destruction without his fault of any of the assigned property; if he sells any thereof for more than the appraised value, he shall account for the excess and, if he sells for less, he shall

be allowed for the loss, if it appears to the court that the sale was expedient and for the interest of all concerned in the property; and in either case the assignee shall exhibit to the court a true account of sales and shall sell the property at public auction, unless the court for sufficient cause upon petition therefor filed otherwise orders.

§ 6046. Selection of exemptions. The debtor or other person authorized by law shall, within ten days after written notice of the filing of the report of the appraisers provided for in section 6044 is served, select his homestead and exemptions to the amount allowed by law at the value determined by the appraisal. If the selection is not made within the time aforesaid, all right to the homestead and exemptions shall be deemed to have been waived. Upon the selection of the homestead and exemptions a report and inventory of the same shall be presented to the district court by the assignee and the court, if satisfied that the debtor or other person claiming the same as exempt is entitled thereto, shall make an order setting apart such homestead and exemptions to the debtor or other person claiming the same.

§ 6047. Assignee to convert property into money. Powers. The assignee in such assignment shall forthwith under the order of the court convert the property assigned into money and shall have power to make all necessary transfers and conveyances for that purpose, and he shall distribute the funds of the estate among the several creditors of such debtor in the manner hereinafter provided and the court may also make all necessary orders for the payment out of the proceeds of such assigned property of all fees and expenses including compensation to such assignee for his service.

§ 6048. Money deposited; property kept distinct. The assignee shall as soon as may be after receiving any money belonging to the estate deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession, and shall as far as practicable keep all property and effects belonging to the debtor separate and apart from all other goods in his possession, or designated by appropriate marks so that they may be easily and clearly distinguished and may not be exposed or liable to be taken as his property or for the payment of his debts.

§ 6049. Investments when distribution delayed. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the court or may authorize the same to be deposited in any bank in this state upon such interest as the bank may contract with the assignee to pay thereon.

§ 6050. Disbursements of assignee. Compensation. The assignee shall be allowed and may retain out of the money in his hands all the necessary disbursements made by him in the discharge of his duty and in the absence of any order of the court to the contrary is entitled to receive the same commissions as are allowed by law to executors, but he cannot receive more and may by order of the court be restricted to a less amount.

§ 6051. Assignee may arbitrate. The assignee may under the direction of the court submit any controversy arising in the settlement of demands against the estate or of the debts due to it to the determination of arbitrators to be chosen by him and the other party to the controversy; and may under such directions compound

and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

§ 6052. Sale of perishable property if title in dispute.

When it appears to the satisfaction of the court that the title to any portion of an estate which has come into the possession of the assignee is in dispute, and that the property is of a perishable nature or liable to deteriorate in value, it may on the petition of the assignee and after such notice to the claimant, his agent or attorney, as the court deems reasonable, order it to be sold by the assignee or under his direction, who shall hold the funds received in place of the property disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any action or controversy between the parties. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the sale.

ARTICLE 5.—CLAIMS AGAINST THE ESTATE.

§ 6053. What provable against estate. All debts due and payable from the insolvent at the time of the commencement of the proceedings in insolvency and all debts then existing, but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the insolvent. All demands against the insolvent for or on account of any personal property wrongfully taken, converted or withheld by him may be proved and allowed as debts to the amount of the value of the property so taken or withheld with interest. When the insolvent is liable for unliquidated damages arising out of any contract or promise on account of any personal property wrongfully taken, converted or withheld, the court may cause such damages to be assessed in such mode as it may deem best and the sum so assessed may be proved against the estate.

§ 6054. Contingent claims. In all cases of contingent debts and contingent liabilities contracted by the insolvent and not herein otherwise provided for, the creditor may make claim therefor and have his claim allowed, with the right to share in the dividend, if the contingency happens before the order for final dividend; or he may at any time apply to the court to have the present value of the debt or other liability ascertained or liquidated, which shall then be done in such manner as the court shall order and he shall be allowed to prove for the amount so ascertained.

§ 6055. Claim proved after liability absolute. When the insolvent is bound as drawer, indorser, surety, bail or guarantor upon any bill, bond, note or any other contract, or for any debt of another person, but his liability does not become absolute until after the adjudication of insolvency, the creditor may prove the same after such liability becomes fixed and before the final dividend is declared.

§ 6056. Proof of claim of surety, etc. Any person liable as bail, surety, guarantor or otherwise for the insolvent, who shall have paid the debt, or any part thereof in discharge of the whole, shall be entitled to prove such debt to the extent of his payment in respect thereof or to stand in the place of the creditor if the creditor has proved the same, although such payment shall have been made after

the proceedings in insolvency were commenced. And any person so liable for the insolvent and who has not paid the whole of such debt, but is still liable for the same or any part thereof, may, if the creditor fails or omits to prove such debt, prove the same either in the name of the creditor or otherwise as the court shall direct.

§ 6057. Claims for rent. When the insolvent is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the insolvency as if the same grew due from day to day and not at such fixed and stated periods.

§ 6058. No other claims allowed. No debts other than those specified in the five preceding sections shall be proved or allowed against the estate.

§ 6059. Mutual debts. If it appears that there has been mutual credit given by the debtor and any other person or mutual debts between them, the account between them shall be stated and one debt set off against the other and the balance shall be allowed or paid, as the case may be, but no set-off or counterclaim shall be allowed of a claim in its nature not provable against the estate.

§ 6060. Claims secured by lien, etc. When a creditor has a mortgage or pledge of real or personal property of the debtor or a lien thereon for securing the payment of a debt claimed by him, the property so held as security shall, if he requires it, be sold and the proceeds applied towards the payment of his debt, and he shall be admitted as a creditor for the residue. The sale shall be made in such manner as the court orders and the creditor and assignee respectively shall execute all deeds and papers necessary or proper for effecting the conveyance. If the creditor does not require such sale and join in effecting the conveyance, he may release and deliver up to the assignee the property held as security and be admitted as a creditor for the whole of his debt. If the property is not so sold, or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

§ 6061. When preference bars claim. No person who shall have accepted any preference, having any reasonable cause to believe that the same was made or given by the debtor contrary to any provision of this chapter, shall prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend thereon until he shall first have surrendered to the assignee all property, money, benefit or advantage received by him under such preference.

§ 6062. Oath of claimant. No debt shall be proved or allowed unless the creditor, or his agent or attorney having knowledge of the facts, makes oath in substance as follows:

I,, do swear (or affirm as the case may be) that by (or against) whom proceedings in insolvency have been instituted at and before the date of such proceedings was and still is justly and truly indebted to me in the sum of dollars, for which sum, or any part thereof, I have not, nor has any other person to my use to my knowledge or belief received any security or satisfaction whatever beyond what has been disposed of agreeably to law. And I do further swear (or affirm as the case may be) that such claim was not procured by me for the purpose of influencing the proceedings in this case, and that I have not directly or indirectly made or entered into any bargain, arrangement or agreement, express or implied, to sell,

transfer or dispose of my claim, or any part thereof, against such debtor, nor have I directly or indirectly received or taken, or made or entered into any bargain, arrangement or agreement, express or implied, to take or receive directly or indirectly any money, property or consideration whatsoever to myself, or to any person or persons to my use or benefit, under or with any understanding or agreement, express or implied, whereby the debtor's discharge is or shall be in any way affected, influenced or controlled, or whereby the proceedings in this case are or shall be affected, influenced or controlled.

In case the above oath is made by an agent or attorney the court may require such further proof of the truth of the statements therein as it deems expedient.

§ 6063. Examination of witnesses as to claims. The court may on the application of the assignee, of any creditor or of the debtor examine upon oath any person who has made proof of a claim and may summon any person to give evidence concerning such proof and may alter or expunge such claim when the evidence shows that it is founded in whole or in part in fraud, illegality or mistake.

§ 6064. Examination of debtor. The court may on application of the assignee or of any creditor, or without any application, at all times require the insolvent upon reasonable notice to attend and submit to an examination on oath upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, his accounts concerning the same, any debts due to or claimed from him and any other matters concerning his property and estate and the due settlement thereof according to law. Such examination shall be in writing and shall be signed by the insolvent and filed with the other proceedings.

§ 6065. Allowance by assignee. Notice of. The assignee shall allow all debts duly proved and shall, when a claim is presented to him and the same is allowed or rejected, give notice personally or by mail to the creditor, or his agent or attorney, presenting the same, as to his action thereon.

§ 6066. Appeal from rejection. A creditor whose claim is wholly or in part rejected may within thirty days after notice of such rejection appeal from the decision of the assignee to the district court. Such appeal shall be placed upon the calendar for trial at the term of the district court which shall be first held within the county after the taking of such appeal.

§ 6067. How taken and heard. Upon taking the appeal a creditor shall file in the office of the clerk of the district court a statement in writing of his claim, setting forth the same substantially as in a complaint in a civil action, and the assignee shall plead thereto in like manner and the practice in such cause shall be the same as in a civil action commenced and prosecuted in the usual manner, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. The party prevailing in the action shall be entitled to costs against the adverse party to be taxed as in other actions. If recovered against the assignee they shall be allowed out of the estate.

ARTICLE 6. — DIVIDENDS.

§ 6068. First dividend. At the expiration of three months from the appointment of the assignee in any case, or as much earlier

as the court may direct, the assignee shall exhibit to the court and to the creditors and file just and true accounts of all his receipts and payments verified by his oath, and a statement of the property outstanding specifying the cause of its outstanding; also what debts or claims are yet undetermined and stating what sum remains in his possession; and thereupon a dividend shall be made, unless for cause the court shall otherwise order. Thereafter further accounts, statements and dividends shall be made in like manner as often as occasion requires.

§ 6069. When preferred claims paid. At any time after the assignment on the request of the assignee or a creditor and upon such notice to the creditors and assignee as the court shall think proper the court may in its discretion order the payment in whole or in part of claims entitled to priority or preference.

§ 6070. Order of priority among claims. The following claims shall be entitled to priority and to be first paid in full in their order:

1. All debts due to the United States and all debts due to and taxes assessed by this state or any county, city or town therein.

2. All debts owing for the wages of servants, laborers, mechanics and clerks for labor performed within one year next preceding the commencement of proceedings in insolvency.

3. All debts due to physicians for medical attendance on the debtor or his family rendered within six months prior to the commencement of proceedings in insolvency to an amount not exceeding fifty dollars.

4. All debts due to persons, who by the law of the United States or of this state, are or may be entitled to a priority or preference in like manner as if this chapter had not been enacted.

5. Legal fees, costs and expenses of suit and for the custody of property attached and the costs of such attachment, when the attachment has been dissolved by bond given by the defendant, if the claim upon which the action was commenced is proved against the estate of the debtor.

§ 6071. Reservation for distant creditors. If at the time of ordering the dividend it appears probable that there are just claims against the estate which by reason of the distant residence of a creditor or from other sufficient reason have not been proved, the court in ordering the dividend shall leave in the hands of the assignee a sum sufficient to pay every such absent creditor a proportion equal to what shall be then paid to the other creditors, which sum shall remain thus unappropriated in the hands of the assignee until the final dividend is declared or until the court orders its distribution.

§ 6072. Second dividend. The assignee shall at such time as the court directs within eighteen months after the appointment of the assignee make a second dividend of the estate, if the same was not wholly distributed upon the first dividend, and any balance in the hands of the assignee shall by order of the court be divided among the creditors who have proved their debts in proportion thereto.

§ 6073. Sale of debts not easily collectible. If at any time before the final dividend there remains in the hands of the assignee any outstanding debts or other property due or belonging to the estate, which cannot in the opinion of the judge be collected and received by the assignee without unreasonable or inconvenient delay, the assignee may under the direction of the judge sell and assign such debts or other property in such manner as the court shall order.

§ 6074. **When second dividend final.** The second dividend shall be final, unless an action relating to the estate is then pending, or part of the estate is outstanding, or unless some other property of the debtor afterwards comes to the hands of the assignee; in which cases another dividend shall be made by order of the court.

§ 6075. **Prior dividends not disturbed.** No creditor whose debt is proved at the time of the second or any subsequent dividend shall disturb a prior dividend, but he shall be paid so far only as the funds remaining unappropriated in the hands of the assignee are sufficient therefor.

§ 6076. **Final dividend. Application by assignee for discharge.** Preparatory to the final account and dividend the assignee shall submit his account to the court and file the same and shall at the time of filing accompany the same with an affidavit that notice by mail has been given to all creditors who have proved their claims, that he will apply for the settlement of his account and for a discharge from all liability as assignee at a time specified in such notice, which time shall be not less than ten nor more than twenty days from such filing. At the hearing the court shall audit the account and any person interested may appear and file exceptions in writing and contest the same. The court thereupon shall settle the account, order a dividend of any portion of the estate remaining undistributed and shall discharge the assignee, subject to compliance with the order of the court, from all liability as assignee to any creditor of the insolvent.

ARTICLE 7. — DISCHARGE OF THE INSOLVENT.

§ 6077. **Duty of debtor as to property.** The debtor shall upon demand deliver to the assignee all the commercial or account books he may have kept and all vouchers, notes, bonds, bills, securities or other evidences of debt, or writings in any manner relating to or having any bearing upon or connection with the property of such debtor; and he shall at the expense of the estate make and execute such deeds and writings and indorse such bills, notes and other negotiable papers, draw such checks and orders for moneys deposited in bank or elsewhere and do all such other lawful acts and things as the assignee at any time reasonably requires and as are necessary or useful for confirming the assignment and enabling the assignee to demand, recover and receive all the estate and property so assigned, especially any part thereof which is without this state.

§ 6078. **Refusal to execute instrument contempt.** If the debtor refuses or unreasonably neglects to execute an instrument when lawfully required pursuant to an order of the court, or disobeys any lawful order or judgment, he may be proceeded against as for a contempt of court.

§ 6079. **When insolvent may apply for discharge.** At any time after the expiration of six months from the adjudication of insolvency or, if no debts have been proved against the insolvent or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, the insolvent may apply to the court for a discharge from his debts.

§ 6080. **Notice of application to creditors.** Upon application for the discharge being made the court shall order notice to be

given by the assignee by mail to all creditors who have proved their claims and by publication in such manner and for such length of time as the court may direct to appear on a day appointed for that purpose and show cause why a discharge should not be granted to the debtor.

§ 6081. When not granted. No discharge shall be granted or, if granted, shall be valid in any of the following cases:

1. If such debtor has willfully sworn falsely in his affidavit annexed to his petition or schedule or upon any examination in the course of the proceedings in insolvency in relation to any material fact.

2. If after the presentation of the petition in insolvency, he shall sell or in any way transfer or assign any of his property or collect any debts due him, and shall not give a just and true account thereof on the hearing of his application and shall not also pay over to the assignee all money so collected or the value of the property so assigned.

3. If he shall secrete any part of his estate or any books or writings relative thereto with intent to defraud his creditors.

4. If he shall fraudulently conceal the names of any of his creditors or the amount of any sum due to any of them.

5. If he shall pay or consent to the payment of any portion of the debt of any of his creditors or shall grant or consent to the granting of any gift or reward to any such creditor upon any express or implied contract or trust that the creditors so paid or rewarded should abstain or desist from opposing the discharge of such insolvent.

6. If he shall be guilty of any fraud whatever contrary to the true intent of this chapter.

§ 6082. Method of opposing. Any creditor opposing the discharge of an insolvent may file a specification in writing of the grounds of his opposition and the court may in its discretion order any question of fact so presented to be tried at the next term of the district court thereafter.

§ 6083. Oath of insolvent. Before any discharge is granted the insolvent must take and subscribe an oath to the effect that he has not done, suffered or been privy to any act, matter or thing specified as a ground for withholding such discharge or as rendering it voidable if granted.

§ 6084. When granted. Certificate of. The court shall, if it satisfactorily appears that the creditor has made a full disclosure and delivery of all his estate as herein required and that he has in all things conformed himself to the directions and requirements of this chapter, grant him a certificate which shall state all fiduciary debts specially exempt from discharge and be in substance as follows:

State of North Dakota, } In District Court,
County of, } ss. Judicial District.

To all to whom these presents shall come, I, judge of the district court of the judicial district for the said county of, send greeting:

Whereas it has been made to appear to me that of in the said county of, whose estate has been assigned for the benefit of his creditors according to law, has made a full disclosure and delivery of all his estate and that he has in all things conformed himself to the requirements of law

in that behalf made and provided, I do accordingly certify that said is absolutely and wholly discharged from all his debts which have been or shall be proved against his estate assigned as aforesaid, and from all his debts which are provable against his estate and which are founded on any contract made by him within this state or to be performed within the same and made subsequent to (date of the taking effect of this act), and from all debts which are provable as aforesaid and which are founded on any contract made by him since that date and due to any persons who were resident within this state on the day of last, being the day of the first publication of the notice requiring creditors to show cause, and from all demands against him for or on account of any personal property wrongfully obtained, taken or withheld by him; and I do further certify that said is forever exempted and discharged from arrest or imprisonment in any action or upon any proceeding in favor of any such person, arising within the time aforesaid, for or on account of any debt or demand whatever which might have been proved against his estate assigned as aforesaid.

Given under my hand and the seal of said court this day of in the year

§ 6085. From what debts discharged. How discharge pleaded. The debtor shall thereupon, except as provided in the next section, be absolutely and wholly discharged from debts proved against his estate and from all debts provable under this chapter and founded on any contract made by him subsequently to the taking effect of this act and while a resident of this state, to be performed within the same, or due to any person residing therein at the time of the first publication of the notice requiring creditors to show cause and from all demands against him for or on account of any personal property wrongfully obtained, taken or withheld by him. Such discharge may be pleaded by a simple averment that on the day of its date it was granted to the debtor, setting forth a copy of the same, as a full and complete bar to all actions commenced on such debt or demands. The certificate shall be conclusive evidence of the fact and regularity of such discharge.

§ 6086. From what not discharged. No debt created by the debtor's defalcation as a public officer, executor, administrator, guardian, receiver, trustee or assignee of an insolvent estate, or by the fraud or embezzlement of the debtor, or claim for goods attached or taken on execution by the debtor as an officer, or for misfeasance in office shall be discharged under this chapter, but the dividend declared thereon shall be payment of so much of said debt or claim. A claim for necessities furnished to the debtor or his family shall not be so discharged unless the claim is proved against his estate.

§ 6087. Does not release persons liable with debtor. A discharge shall not release or discharge a person liable for or with the debtor for the same debt as a partner, joint contractor, indorser, surety or otherwise.

§ 6088. Discharge of debtor once insolvent. A discharge shall not be granted to a debtor a second time insolvent whose assets do not pay fifty per cent of the claims proved against the estate, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed in the case at or before the time of the hearing of the application for discharge. No discharge shall be granted to a debtor a third time insolvent; except that a debtor who

has paid all debts owing by him at the time of his previous insolvency or who has been voluntarily released therefrom by his creditors shall be entitled to a discharge in the same manner and with the same effect as if he had not been previously insolvent.

§ 6089. What preferences void. Recovery. No discharge. If a person, being insolvent or in contemplation of insolvency, within sixty days before the filing of the petition by or against him, with a view to give a preference to a creditor or person who has a claim against him or is under liability for him, procures any part of his property to be attached or seized on execution or makes any payment, pledge, assignment, transfer or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer or conveyance or to be benefited thereby, having reasonable cause to believe such person is insolvent or in contemplation of insolvency, and that such payment, pledge, assignment, transfer or conveyance is made in fraud of the laws relating to insolvency, the same shall be void; and the assignee may recover the property or the value of it from the person so receiving it or so to be benefited and the debtor shall not be entitled to discharge, and a discharge, if received by him, shall be void and of no effect. The provisions of this and the next section shall not apply to the payment of money or a transfer of property in payment not exceeding fifty dollars in amount upon a debt contracted for necessities furnished to the debtor or his family.

§ 6090. When payment or security void. Judgments. Any payment by the insolvent of a pre-existing debt or any pledge, assignment, transfer or conveyance of any part of his property to secure the payment of the same, either directly or indirectly, absolutely or conditionally, made within thirty days before the filing of the petition by or against the insolvent shall be void and the assignee may recover the property or the value of it from the person receiving it or to be benefited thereby. No judgment rendered in an action which has not been pending for more than six months before the filing of the petition by or against the insolvent and not docketed until within thirty days before the filing of such petition shall be a lien upon the real property of the insolvent.

§ 6091. New trial. Grounds of. Limited to those specified. Within one year after the granting of the discharge to the insolvent any creditor may apply, upon affidavit or proof to the district court upon notice to such insolvent, for a new trial of the application for a discharge. Such insolvent may resist such application by affidavit and other proofs and, if upon the hearing of the application the court shall be satisfied that any grounds for rendering such discharge voidable mentioned in section 6081 and which have been specified in such application for a new trial exist, it shall make an order vacating such discharge and directing a new trial of such insolvent's application for a discharge. Such new trial shall be had as to the grounds specified in such application only, in the same manner as hereinbefore provided for a trial upon the original application of the insolvent; and if the verdict of the jury or finding of the court shall be in favor of the creditor so applying the discharge shall be vacated; otherwise it shall be final and conclusive.

§ 6092. Appeals. Appeals may be taken to the supreme court by such insolvent from an adjudication of insolvency or from any order denying or vacating his discharge, or by any creditor opposing

such discharge from the order granting it, or from the order denying an application for a new trial, or an order in favor of the insolvent upon a new trial of the application for a discharge; which appeal shall be taken as ordinary appeals in civil actions.

ARTICLE 8. — PROCEEDINGS PECULIAR TO PARTNERSHIPS.

§ 6093. Petition and procedure. Two or more persons who are partners in business may be adjudged insolvent either on the petition of such partners or any of them, or on the petition of one or more creditors holding debts provable against the firm amounting to at least four hundred dollars. The same proceedings shall be had therein as in the case of an individual except as hereinafter provided, and in such proceedings an assignee may be appointed who shall take possession of all property of the firm and also of the separate property of each of the general partners. If the petition is made by one or more, but not by all of the partners, ten days' notice of the time and place of the hearing of the petition shall be given to the other partners, if within the United States. All the creditors of the firm and the separate creditors of each partner may prove their respective debts.

§ 6094. By whom assignee chosen. How partnership and individual property applied. The assignee shall be chosen by the creditors of the partnership. He shall keep separate accounts of the property of the partnership and the separate estate of each member thereof; and after deducting out of the whole amount received by him the whole of the expenses and disbursements, the net proceeds of the partnership property shall be appropriated to pay the creditors of the partnership and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors. If there is any balance of the separate estate of any partner after payment of his separate debts, such balance shall be added to the partnership estate for the payment of the partnership creditors; if there is any balance of the partnership estate after payment of the partnership debts, such balance shall be appropriated to and divided among the separate estates of the several partners according to their respective right and interest therein, and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts.

§ 6095. Rule governing discharge. The certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone. If such partners reside in different judicial districts, the court in which the petition is first filed shall retain exclusive jurisdiction over the case.

CHAPTER 39.

SPECIAL PROCEEDINGS OF A CIVIL NATURE.

ARTICLE 1. — PRELIMINARY PROVISIONS.

§ 6096. **Parties to.** When a special proceeding is prosecuted by one having a special interest in the proceeding, it shall not be necessary for the state to be joined as plaintiff therein, but the person prosecuting the same shall be known as the plaintiff and the adverse party as the defendant. § 653, C. Civ. P. am'd.

§ 6097. **Judgment in defined. Motion and order.** A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding. § 654, C. Civ. P. am'd.

ARTICLE 2. — WRIT OF CERTIORARI.

§ 6098. **When and by whom granted.** A writ of certiorari may be granted by the supreme and district courts, when inferior courts, officers, boards or tribunals have exceeded their jurisdiction and there is no appeal, nor, in the judgment of the court, any other plain, speedy and adequate remedy. § 655, C. Civ. P. am'd.

§ 6099. **How application made.** The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party or may grant an order to show cause why it should not be allowed or may grant the writ without notice. § 656, C. Civ. P.

§ 6100. **To whom directed.** The writ may be directed to the inferior court, tribunal, board or officer, or to any other person having the custody of the records or proceedings to be certified. § 657, C. Civ. P.

§ 6101. **Requisites of writ.** The writ of certiorari shall command the party to whom it is directed to certify fully to the court issuing the writ at a specified time and place, and annex to the writ a transcript of the record and proceedings, describing or referring to them with convenient certainty, and a statement of other matter specified in and required by the writ, that the same may be reviewed by the court, and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed. § 658, C. Civ. P. am'd.

§ 6102. **To officer whose term has expired.** A writ of certiorari may be issued to and a return to a writ of certiorari may be made by an officer, whose term of office has expired. Such an officer may be punished for a failure to make a return to the writ as required thereby, or to make a further return as required by an order for that purpose.

§ 6103. **Stay of proceedings.** If a stay of proceedings is not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed. § 659, C. Civ. P.

§ 6104. **Other proofs permitted if officer dies, etc.** If the officer or other person whose duty it is to make a return dies, absconds or moves from the state, or becomes insane after the writ is issued § 660, C. Civ. P. am'd.

and before making a return or after making an insufficient return, and it appears that there is no other officer or person from whom a sufficient return can be procured by means of a new writ, the court may in its discretion permit affidavits or other written proofs relative to the matters not sufficiently returned to be produced and may hear the case accordingly. The court may also in its discretion permit either party to produce affidavits or other written proofs relative to any alleged error of fact or any other question of fact, which is essential to the jurisdiction of the body or officer to make the determination to be reviewed, when the facts in relation thereto are not sufficiently stated in the return and the court is satisfied that they cannot be made to appear by means of an order for a further return.

§ 6105. **How served.** The writ must be served in the same manner as a summons in a civil action except when otherwise expressly directed by the court.

§ 6106. **Extent of review.** The review upon this writ cannot be extended further than to determine whether the inferior court, tribunal, board or officer has regularly pursued the authority of such court, tribunal, board or officer.

§ 6107. **Return of writ and hearing.** If the return to the writ is defective the court may order a further return to be made. Any record made by the inferior court, officer, board or tribunal may be impeached by the return to the writ, or in the cases mentioned in section 6104 by affidavits or other written proof. Upon the final hearing the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming, or annulling, or modifying the proceedings below.

§ 6108. **Judgment sent below.** A copy of the judgment signed by the clerk must be transmitted to the inferior court, tribunal, board or officer, having custody of the record or proceedings certified up.

§ 6109. **Judgment roll.** A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, constitutes the judgment roll.

ARTICLE 3. — WRIT OF MANDAMUS.

§ 6110. **By and to whom issued.** The writ of mandamus may be issued by the supreme and district courts to any inferior tribunal, corporation, board or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

§ 6111. **When issued.** The writ must be issued in all cases when there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit upon the application of the party beneficially interested.

§ 6112. **Alternative or peremptory.** The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed and command such party immediately upon the receipt of the writ, or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place why he has not

done so. The peremptory writ must be in a similar form except that the words requiring the party to show cause why he has not obeyed the command must be omitted and a return day inserted.

§ 6113. **When each may issue.** When the application to the court is made without notice to the adverse party and the writ is allowed, the alternative writ must be first issued; but if the application is upon due notice and the writ is allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court whether the adverse party appears or not. § 608, C. Civ. P.

§ 6114. **Answer.** On the return of the alternative writ, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer under oath made in the same manner as an answer to a complaint in a civil action. § 609, C. Civ. P.

§ 6115. **Jury may assess damages.** If an answer is made, which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties and upon the supposed truth of which allegation the application for the writ is based, the court may in its discretion order the question to be tried before a jury, and postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial and the county or subdivision must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him. § 700, C. Civ. P.

§ 6116. **Latitude of proof.** On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency and may countervail it by proof either in direct denial or by way of avoidance. § 701, C. Civ. P.

§ 6117. **New trial. Where motion made.** The motion for new trial must be made in the court in which the issue of fact is tried. § 702, C. Civ. P. am'd.

§ 6118. **Transmission of verdict.** If no notice of a motion for a new trial is given or, if given, the motion is denied, the clerk within five days after rendition of the verdict or denial of the motion must transmit to the court in which the application for the writ is pending a certified copy of the verdict attached to the order of trial after which either party may bring on the argument of the application upon reasonable notice to the adverse party. § 703, C. Civ. P.

§ 6119. **Hearing.** If no answer is made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue only immaterial statements not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case. § 704, C. Civ. P.

§ 6120. **Damages. Peremptory writ.** If judgment is given for the applicant, he may recover the damages which he has sustained as found by the jury, or as may be determined by the court, or referee upon a reference to be ordered, together with costs; and for such damages and costs execution may issue; and a peremptory mandamus must also be awarded without delay. § 705, C. Civ. P.

§ 6121. **How writ served.** The writ must be served in the same manner as summons in a civil action except when otherwise expressly directed by order of the court. Service upon a majority of § 706, C. Civ. P.

the members of any board or body is service upon the board or body whether at the time of the service the board was in session or not.

§ 707, C. Civ. P.

§ 6122. Disobedience. Punishment. When a peremptory mandamus has been issued and directed to any inferior tribunal, corporation, board or person, if it appears to the court that any member of such tribunal, corporation, board or such person upon whom the writ has been personally served has without just excuse refused or neglected to obey the same, the court may upon motion impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

ARTICLE 4.—WRIT OF PROHIBITION.

§ 708, C. Civ. P.

§ 6123. Definition of. The writ of prohibition is the counter-part of the writ of mandamus. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

§ 709, C. Civ. P.

§ 6124. By whom and when issued. It may be issued by the supreme and district courts to an inferior tribunal, or to a corporation, board or person in all cases, when there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit on the application of the person beneficially interested.

§ 710, C. Civ. P.

§ 6125. Alternative or peremptory. The writ must be alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court at a specified time and place why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

§ 711, C. Civ. P.

§ 6126. Other laws applicable. The provisions for the proceeding under the writ of mandamus except the first three sections thereof apply to this proceeding.

ARTICLE 5.—MISCELLANEOUS PROVISIONS.

§ 712, C. Civ. P.
am'd.

§ 6127. What writs issue in vacation. Writs of certiorari, mandamus and prohibition may be issued by a judge of the district court in vacation, and when issued by a judge of the district court may be made returnable and a hearing thereon be had in vacation.

§ 713, C. Civ. P.

§ 6128. Rules of practice. Except as otherwise provided in this chapter, the provisions of chapters 3 to 34 of this code are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

§ 714, C. Civ. P.

§ 6129. New trials and appeals. The provisions of chapters 10 and 14 relative to new trials and appeals, except in so far as they are inconsistent herewith, apply to the proceedings mentioned in this chapter.

CHAPTER 40.

SUMMARY PROCEEDINGS.

ARTICLE 1. — CONFESSION OF JUDGMENT WITHOUT ACTION.

§ 6130. **For what confessed.** A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. § 715, C. Civ. P.

§ 6131. **Verified statement. Contents.** A statement in writing must be made, signed by the defendant and verified by his oath, to the following effect: § 716, C. Civ. P.

1. It must state the amount for which judgment may be entered and authorize the entry of judgment therefor.

2. If the judgment to be confessed is for money due or to become due, it must state concisely the facts out of which the debt arose, and must show that the sum confessed therefor is justly due or to become due.

3. If the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and must show that the sum confessed therefor does not exceed the amount of such liability.

§ 6132. **Procedure in court. Execution.** The statement must be presented to the district court or a judge thereof and, if the same is found sufficient, the court or judge shall make an order that judgment be entered by the clerk, whereupon the statement and order may be filed in the office of the clerk, who shall enter in the judgment book a judgment for the amount confessed with costs. The statement and affidavit with the judgment shall thenceforth become the judgment roll. Execution may be issued and enforced in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is recovered is not all due, or is payable in installments and the installments are not all due, the execution may issue upon such judgment for the collection of such installments as have become due, and shall be in the usual form, but shall have indorsed thereon by the attorney or person issuing the same a direction to the sheriff to collect the amount due on such judgment with interest and costs, which amount shall be stated with interest thereon and the costs of said judgment. Notwithstanding the issue and collection of such execution, the judgment shall remain as security for the installments thereafter to become due, and whenever any further installments become due, execution may in like manner be issued for the collection and enforcement of the same. § 717, C. Civ. P. am'd.

ARTICLE 2. — SUBMITTING A CONTROVERSY WITHOUT ACTION.

§ 6133. **Requisites of the case.** Parties to a question in difference, which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real and the proceed-

ing in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action was pending.

§ 719, C. Civ. P. **§ 6134. Entry of judgment. Judgment roll.** Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

§ 720, C. Civ. P. **§ 6135. Judgment enforceable as other judgments.** The judgment may be enforced in the same manner as if it had been rendered in an action and shall be subject to appeal in like manner.

ARTICLE 3. — RELIEF OF PERSONS CONFINED IN JAIL ON CIVIL PROCESS.

§ 721, C. Civ. P. **§ 6136. Discharge authorized.** Every person confined in jail on execution issued on judgment recovered in a civil action shall be discharged therefrom at the end of ten days from his first confinement therein upon the conditions hereinafter specified.

§ 722, C. Civ. P.
am'd. **§ 6137. Notice of application.** Such person must cause notice in writing to be given to the plaintiff or his attorney when and where he will apply to the judge of the district court of the county in which he is confined for the purpose of obtaining a discharge from his imprisonment.

§ 723, C. Civ. P.
am'd. **§ 6138. How served.** Such notice must be served by delivering to and leaving with the plaintiff or his attorney in the action a copy thereof, if they, or either of them, reside in this state; otherwise notice may be served by mail. The notice shall be served a sufficient time before the time specified therein for the hearing of the application to allow the person upon whom it is served time to attend by the usual route of travel and one day for preparation.

§ 724, C. Civ. P. **§ 6139. Hearing.** At the time and place specified in the notice such person must be taken under the custody of the sheriff before such district judge and examined on oath concerning his property and effects and the disposal thereof and his ability to pay the judgment for which he is committed; and such district judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor; and such examination must at the election of the creditor be reduced to writing and subscribed and sworn to by the debtor and other witnesses.

§ 725, C. Civ. P. **§ 6140. Oath of prisoner.** If upon such examination the judge before whom the same is had shall be satisfied that the prisoner is entitled to his discharge, he shall administer to him the following oath:

I,, do solemnly swear (or affirm) that I have not any estate, real or personal, to the amount of ten dollars, except such as is by law exempt from levy and sale on execution, and that I have not any other estate, nor have I conveyed, concealed or in any way disposed of any of my property, real or personal, with design to secure the same to my use, to hinder, or delay, or defraud my creditors. So help me God.
(Signed A. B.)

§ 726, C. Civ. P.
am'd. **§ 6141. Certificate of discharge.** After administering the oath the judge must make a certificate under his hand as follows:

To the sheriff of the county of : I do hereby certify that, confined in your jail upon an execution at the suit of is entitled to be discharged from imprisonment, if he is imprisoned for no other cause.

§ 6142. **Forever exempt.** The jailer upon receiving such certificate must forthwith discharge the prisoner, if he is imprisoned for no other cause. The prisoner after being so discharged shall be forever exempt from arrest or imprisonment for the same debt, unless he shall be convicted of having sworn falsely upon his examination or in taking the oath herein prescribed. § 727, C. Civ. P. am'd.

§ 6143. **Judgment remains against estate.** The judgment against any prisoner who is discharged as herein provided for, shall remain in full force against the estate which may then or at any time after belong to him. And the plaintiff may take out a new execution against the goods and estate of the debtor in like manner and with like effect as if he had never been committed in execution. § 728, C. Civ. P.

§ 6144. **Prison costs.** If the debtor shall undertake to satisfy the execution, he shall not be entitled to his discharge from imprisonment until he has paid all the charges for his commitment and support in prison in addition to the sum due on the execution and the costs and charges thereon. § 729, C. Civ. P.

§ 6145. **Discharge by plaintiff.** The prisoner may at any time be discharged upon the order of the plaintiff in the action; and, when so discharged, such debtor shall not thereafter be liable to imprisonment again for the same cause of action. § 730, C. Civ. P.

§ 6146. **Creditor to advance prison costs.** Whenever a debtor is committed to jail on execution in a civil action, the creditor or some one in his behalf must from time to time advance to the sheriff or jailer sufficient money to pay for the support of such prisoner; and in case such creditor shall neglect or refuse so to advance the money for such prisoner's support upon the sheriff's or jailer's demand, the jailer must, at the expiration of twenty-four hours after such demand, discharge such prisoner from custody and such discharge shall have the same effect as a discharge by order of the creditor. § 731, C. Civ. P.

§ 6147. **May apply every ten days for discharge.** If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days in the same manner as above provided and the same proceedings must thereupon be had. § 732, C. Civ. P. am'd.

§ 6148. **Appeal.** Either party may appeal to the supreme court from the order of the district judge granting or refusing a discharge from imprisonment under these provisions in the same manner as from an order granting, refusing, continuing or modifying a provisional remedy. § 733, C. Civ. P.

CHAPTER 41.

CHANGE OF NAMES OF PERSONS AND PLACES.

§ 734, C. Civ. P. **§ 6149. Court authorized to change.** The district court shall have the authority to change the names of persons, towns, villages and cities within this state.

§ 735, C. Civ. P. **§ 6150. Petition. Contents.** Any person desiring to change his or her name may file a petition in the district court of the county or subdivision in which such person may be a resident, setting forth:

1. That the petitioner has been a bona fide citizen of such county or subdivision for at least six months prior to the filing of the petition.

2. The cause for which the change of the petitioner's name is sought.

3. The name asked for.

And it shall be the duty of the judge of the district court at any term thereof after the filing of such petition, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition and that there exists proper and reasonable cause for changing the name of the petitioner and that thirty days' previous notice of the intended application has been given in some newspaper printed in such district, to order and direct a change of the name of such petitioner and to direct that such order be entered by the clerk in the journal of the court.

§ 736, C. Civ. P. **§ 6151. Town, village or city. Petition.** Whenever it may be desirable to change the name of any town, village or city in any county of the state, a petition for that purpose may in like manner be filed in the district court of the county or subdivision in which such town, village or city is situated, setting forth the cause why such change of name is desirable and the name asked to be substituted, and the court on being satisfied by proof that the prayer of the petitioners is just, proper and reasonable and that notice as in case of the change of names of persons provided for in the preceding section has been given and that two-thirds of the legal voters of such town, village or city desire such change of name and that there is no other town, village or city in the state of the name asked for, may order and direct such change of name and direct the clerk to enter such order upon the journal of the court.

§ 737, C. Civ. P. **§ 6152. Costs. Not to affect rights or pending actions.** All proceedings under this chapter shall be at the cost of the petitioner or petitioners and judgment may be entered against him or them for costs as in other civil actions; provided, always, that any change of name under the provisions of this chapter shall in no manner affect or alter any action or legal proceedings then pending, or any right, title or interest whatsoever.

CHAPTER 42.

TRESPASS OF ANIMALS.

§ 6153. **Liability of owner for.** Any person owning or having in his charge or possession any horses, mules, cattle, goats, sheep or swine or any such animals, which shall trespass upon the lands of another whether fenced or not fenced, shall be liable to the party injured for all damages sustained by him by reason of such trespassing, to be recovered in a civil action in the county in which such damage occurred, and the proceedings shall be the same in all respects as in other civil actions except as herein modified; provided, that no property shall be exempt from execution issued upon judgments obtained under this chapter except absolute exemptions; and provided, further, that the party claiming damages under the provisions of this chapter shall bring an action to recover the same within sixty days after the infliction of such damages.

§ 747, C. Civ. P.
§ 1, c. 115, 1883.
am'd.

§ 6154. **Owner defined.** Any person occupying or cultivating lands shall be considered the owner thereof in any action under the provisions of the last section.

§ 748, C. Civ. P.

§ 6155. **Notice of damages.** The party sustaining damages from the trespass of animals before commencing an action therefor shall, if he knows to whom such animals belong, notify him or the person having them in charge of such damage and the probable amount thereof.

§ 749, C. Civ. P.

§ 6156. **Custody until damages paid.** The person suffering damages as aforesaid may keep such offending animals in custody, until the damages and costs are paid or until good and sufficient security is given therefor; and whenever any animals are restrained under this chapter, the person restraining the same shall forthwith notify the owner or person, in whose custody the animals were at the time the trespass was committed, of their seizure, if he knows such owner or person.

§ 750, C. Civ. P.
am'd.

§ 6157. **Trial. Judgment lien on animals.** Upon the trial of an action under the provisions of section 6153 the plaintiff shall prove the amount of damage sustained and, if he has kept in custody the animals committing such damage, the amount of expense incurred therefor. And any judgment rendered in the action against the defendant shall be a lien upon the animals and they may be sold and the proceeds applied to the satisfaction of the judgment as in other cases of sale of personal property on execution; but if it shall appear upon the trial that no damage was sustained, judgment shall be rendered against the plaintiff for costs and for any damages sustained by defendant.

§ 751, C. Civ. P.
am'd.

§ 6158. **Service on unknown owner.** If upon the trial it appears that the defendant is not the owner or person in charge of the offending animals, the action shall be dismissed as to him and may proceed as against a defendant whose name is unknown. 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 an action against a defendant unknown. In such case service shall be made by publishing a copy of the summons with a notice stating the

§ 752, C. Civ. P.
am'd.

nature of the action in a newspaper, if there is one published in the county and, if not, by posting copies of the summons and notice in three public places within the county, in either case not less than ten days previous to the day of trial.

§ 733, C. Civ. P.
am'd.

§ 6159. Sale. Disposition of surplus. After judgment shall have been rendered against the defendant unknown as aforesaid, the offending animals shall be sold, and after the judgment and costs have been satisfied, if there is any surplus, it shall be placed in the hands of the county treasurer for the benefit of the owner, and if the owner does not appear and claim the same within one year from the day of sale, it shall be paid into the school fund of said county.

PROBATE CODE.

CHAPTER 1.

THE CODE AND ITS OPERATION.

§ 6160. **Title.** This act shall be known as the probate code of the state of North Dakota.

§ 6161. **Code establishes the law. How construed.** This code establishes the law of this state upon the subjects to which it relates; and its provisions and all proceedings under it shall be liberally construed, with a view to effect its objects and promote justice.

§ 6162. **Rights not affected.** No right accrued or act done in any proceeding commenced before this code takes effect is in any manner impaired or injuriously affected by its provisions; but the mode of procedure shall thereafter conform as nearly as may be to its requirements.

§ 6163. **Provisions, when in force.** When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute in force before this code takes effect, such provisions shall remain in force and be deemed a part of this code as respects the right so affected.

§ 6164. **Time, how computed.** Unless otherwise specially provided, every period of time herein prescribed with reference to the commencement of a proceeding or the performance of any other act, shall be computed from the date of the event at which such period begins although such event happened before the taking effect of this code. But this section shall not be construed so as to conflict in any manner with the provisions of the preceding section.

§ 6165. **Words and phrases, how construed.** Unless otherwise defined herein, words and phrases used in this code are to be construed according to the rules and definitions recognized in or prescribed by other statutes applicable thereto.

§ 6166. **Signification of certain words and phrases.** The following words and phrases have in this code the signification herein prescribed, except where a different signification is apparent from the context:

1. The word "case" refers to a subject matter which by the provisions of this code is cognizable in a county court, and includes every proceeding therein maintained in relation to the same matter or estate.

2. The words "county court," "county judge," and "clerk," are to be understood as referring only to the exercise of the jurisdiction and powers herein conferred.

3. The word "will" includes "codicil" and denotes a last will and testament, or an instrument purporting to be such, according to the context.

4. The phrase "person interested," when used with reference to an estate or fund includes every person entitled either absolutely or conditionally, to share in the same or the proceeds thereof, except a creditor.

5. The word "mandate" includes any process or order issuing from the court directing or prohibiting the performance of any act.

CHAPTER 2.

THE COUNTY COURT.

ARTICLE 1.—ORGANIZATION, POWERS AND DUTIES.

§ 110. Const.

§ 6167. County court established. There is established in each organized county of this state a county court, which shall be a court of record, held by the county judge in the manner hereinafter prescribed.

§ 90, c.21, Pol.C.
am'd.

§ 6168. Terms of. There are no stated terms of the county court but the court is deemed to be always open, and every official act of the judge done in pursuance of this code shall be deemed to be the act of the court.

§ 6169. Seal. Each county court shall have a seal upon which shall be inscribed the name of the state and county, and the words "Seal of the County Court." Such seal must be furnished by the board of county commissioners and be at least one and five-eighths of an inch in diameter, but when the court is unprovided with a seal the judge may procure one at the expense of the county, and a scroll or other device may be used as a seal until a seal can be procured.

§ 91, c.21, Pol.C.
am'd.

§ 6170. Office of the judge, where. The county judge shall have an office at the county seat in rooms provided by the county, and furnished in like manner with tables, chairs, desks, cases for books and papers, books or record blanks, stationery and other articles required for the purposes of the office.

§ 6171. Office when open. The judge shall keep his office open at all proper times during reasonable hours for the purpose of holding court and transacting business as prescribed by law. He shall safely keep the records of the court and all documents and other papers lawfully intrusted to him by virtue of his office, or in the course of any proceeding before him and deliver the same over to the persons entitled thereto or to his successor in office; but the records

must be open during office hours to access and inspection by persons having any business therewith.

§ 6172. Judge not to act as attorney, when. A county judge shall not be attorney in any civil or criminal action or other judicial proceeding, which involves or relates to an estate or any part thereof or other matter over which he has or may thereafter obtain jurisdiction, either for or against a surviving husband or wife, heir, devisee, executor, administrator, guardian or ward, debtor, creditor or other person, and he shall not counsel or advise as to any such action or proceeding or contemplated action or proceeding, or have a law partner or be otherwise connected in business with a practicing attorney. A willful violation of any of the foregoing provisions of this section shall be deemed willful misconduct in office. § 92, c. 21, Pol. C.
am'd.

§ 6173. Clerk, how appointed. A clerk may be appointed for the county court by an order duly entered in the journal, and the appointment may be in like manner revoked by the judge at his pleasure. A clerk so appointed may until his appointment is revoked exercise the powers expressly conferred upon the clerk by the provisions of this code, but the judge shall be responsible for all his official acts, and may at all times act as his own clerk. No practicing attorney shall be appointed as clerk and no clerk shall act as attorney or as executor, administrator, guardian or appraiser in any matters before the court.

§ 6174. Clerk, powers of. A clerk may exercise concurrently with the judge the following powers:

1. He may certify and sign as clerk any of the records of the court, except such as require the signature of the judge.
2. He may certify and sign as clerk and affix the seal of the court to a transcript or exemplification of any record remaining therein.
3. He may sign as clerk and affix the seal of the court to a subpoena, and issue the same with the same effect as if issued by the court.
4. He may administer an oath authorized or required in any proceeding in the court and certify the same under the seal of the court.
5. He may postpone for a definite time not exceeding thirty days any hearing or other matter, when the judge is absent from his office.

§ 6175. Sheriff to execute process. The sheriff of the county must in person or by deputy attend the sittings of the county court whenever the judge shall so direct and must execute according to law or the direction of the court every process or other mandate issuing from the court. But when he is absent or unable to act in the discharge of any duty required of him by this section, the judge may direct any constable of the county to act in his place.

§ 6176. Compensation of sheriff. Sheriffs and other officers shall receive for their services rendered in the county court or in the execution of its mandates the same compensation as for like services in the district court payable by the county or by a party in like manner.

ARTICLE 2.—JURISDICTION AND POWERS OF THE COUNTY COURT.

§ 6177. Jurisdiction. The county court has exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of exec- § 111. Const.

utors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law.

§ 1. Prob. C.
am'd.

§ 6178. Powers of the court. In the exercise of its jurisdiction the county court has power:

1. To take the proof of wills, to admit wills to probate and to revoke the probate thereof.
2. To take proof of and determine heirship, and to revoke such determination.
3. To grant and revoke letters testamentary and letters of administration, and to appoint a successor in place of a person whose letters have been revoked.
4. To direct and control the conduct and settle the accounts of executors and administrators.
5. To direct the disposition of the property of decedents for the payment of their debts and funeral expenses and expenses of administration.
6. To enforce the payment of legacies and the distribution of estates of decedents and the payment or delivery by executors and administrators of money or other property in their possession belonging to the estate.
7. To appoint and remove guardians, to direct and control their conduct, settle their accounts and compel the payment and delivery by them of money or other property belonging to their wards.
8. To administer justice in all matters within its jurisdiction according to the provisions of the statutes relating thereto.

§ 7. Prob. C.
am'd.

§ 6179. Jurisdiction in wills and administration. The county court of each county has jurisdiction to take the proof of a will and grant letters testamentary, to grant administration or determine heirship, as the case requires:

1. When the decedent was at the time of his death a resident of that county, whether his death happened there or elsewhere.
2. When there is property of the decedent within that county which remains unadministered, he not being a resident of the state at the time of his death in whatever place the death happened.
3. When the application was first made in that county, if the jurisdiction as defined in the preceding subdivision or in section 6180 is in two or more counties.

§ 6180. Appointment of a guardian. The jurisdiction to appoint a guardian is in the county court of the county in which the ward resides or in a case relating exclusively to his estate in the county where the property or some part thereof is situated. But the provisions of this chapter have no application to the appointment of a guardian for the special purpose of maintaining or defending the interests of a minor or other party in an action or proceeding in any court of competent jurisdiction.

§ 6181. County includes other territory, when. For the purposes of the two preceding sections, a county is deemed to extend to all adjoining territory situated within the same judicial district which is not embraced in or attached to any organized county.

§ 6182. Judge disqualified. Procedure. When the judge of the county court having jurisdiction as defined in sections 6178 and 6179 is disqualified from acting in a case for any cause specified in section 6188 of this code, the county court of the county to which

the same may be transferred has also jurisdiction, but can do no act in the exercise thereof until the transfer has been ordered.

§ 6183. Jurisdiction, how obtained. The court obtains jurisdiction in each case by the existence of the jurisdictional facts prescribed by statute and the presentation of a petition setting forth the facts; and may thereupon obtain jurisdiction of the persons interested by their appearance or by the process of citation.

§ 6184. Jurisdiction extends over state, when. Jurisdiction once duly exercised in a case by a county court is coextensive with the state, and, except as otherwise specially prescribed by law, excludes the subsequent exercise of jurisdiction by another court over the same case, or any of its incidents; and all further proceedings to be taken in a county court in relation to the same matter or estate must be taken in the same court.

§ 9, Prob. C.
am'd.

§ 6185. Objection to decree. Jurisdiction. Proceedings. How taken. An objection to a decree or order of a county court for an erroneous determination of any fact necessary to jurisdiction or for a defect or omission in such decree or order, or in the pleadings or other papers on which it was founded, or the finding or statement of a jurisdictional fact which actually existed or for a failure to take any intermediate proceeding prescribed by law is available only on direct application to the same court or on appeal.

§ 6186. Proceedings, how construed. The proceedings of a county court in the exercise of its jurisdiction are construed in the same manner and with like intendments, as the proceedings of courts of general jurisdiction, and to its records, orders and decrees there is accorded like force, effect and legal presumptions as to the records, orders, judgments and decrees of courts of general jurisdiction.

§ 2, Prob. C.
am'd.

§ 6187. County Courts, authority and power of. The county court has authority and power in each case:

1. To issue citations, subpoenas and other process under the seal of the court to any part of the state, and enforce obedience thereto or return thereof according to law.

2. To postpone from time to time for proper cause a hearing or other proceeding.

3. To compel the attendance of a party or other person whenever his presence is lawfully required.

4. To restrain by order an executor, administrator or guardian to whom a citation or other process has been duly issued from acting as such until the further order of the court.

5. To require by order an executor, administrator, guardian or other person subject to the jurisdiction of the court to perform any duty imposed on him by statute or by the court under the authority of the statute.

6. To maintain order and decorum during the sittings of the court; and to punish any person for a contempt of court where the district court might punish him for a similar contempt and in like manner.

7. To open, vacate or modify a decree or order of the court for fraud, mistake, newly discovered evidence or other sufficient cause.

8. To enter as of a former time a decree or order of the court for the purpose of correcting a mistake or supplying an omission.

9. To complete all unfinished business and certify and sign with the date of so doing all papers or other records previously left uncompleted or unsigned and to make and certify transcripts of all records of the court.

10. With respect to any matter not expressly provided for in this code, to act as nearly as may be according to the code of civil procedure, and to exercise such other incidental powers as are necessary to carry into effect the powers expressly conferred.

ARTICLE 3.—TRANSFER OF CASES IN THE COUNTY COURT.

§ 4, Prob. C.
am'd.

§ 6188. Cases, how transferred. A case may be transferred by order of the county court in which it is pending for either of the following causes:

1. When the judge is a party or claims to have an interest actual or contingent in the estate to which the case relates.

2. When he is or has been attorney for a party in some proceeding therein.

3. When he is related to a party by consanguinity or affinity within the fourth degree.

4. When the case involves the proof of a will to which the judge was a subscribing witness or witness examined or necessary to be examined, or in which he is named as executor unless he declines to act as such.

§ 6189. Transfer of case, when made. A transfer must be made upon the presentation of the first petition in the case or at the time when the parties are cited to appear thereto if the cause is then known to exist, or, if not, as soon as may be after the existence of such cause is discovered; and no objection to a decree or other act of the court for any of the causes specified in the preceding section is in any manner available except by application for such transfer within the time herein prescribed.

§ 6190. Summary transfer, when. Such transfer may be ordered summarily upon facts within the knowledge of the judge or upon the affidavit of a party, setting forth particularly one or more of the cases enumerated in section 6188 according to the facts, and such further facts as may be necessary, under the provisions of the last section and demanding a transfer. The facts set forth in such affidavit shall be taken as true unless controverted by affidavit. The order for a transfer must direct that the case be transferred to the county court of some other county having jurisdiction by the provisions of section 6179 or section 6180 of this chapter or if there is none such, to that of the county most convenient to the parties.

§ 5, Prob. C.
am'd.

§ 6191. Transfer, effect of. When a transfer has been made, all further proceedings in the court making the order must be suspended and unless an appeal is taken, the original papers and a transcript of the docket and journal entries must be certified and transmitted within thirty days to the judge of the county court designated in the order, who shall record the proceedings anew and thereafter proceed as if he had jurisdiction of the case from the beginning.

ARTICLE 4.—RECORDS OF THE COUNTY COURT.

§ 6192. Records, what constitute. The records of each county court consist of the original papers in the cases adjudicated or pending therein and the books prescribed in the next section.

§ 6193. Records to be kept. There shall be kept in each county court the following books of record:

1. A journal, in which there shall be entered under the proper dates and in the order in which the transactions take place, respectively, a brief statement of the nature and object of each proceeding; a minute or statement of each act of the judge or of the parties therein, except the filing of a paper; a minute of each hearing or postponement; the facts appearing by the return to each process or mandate issued from the court; and each decision or direction given by the court in the progress of a proceeding and such other matters as are specially required to appear of record; but these provisions do not require a minute of the issuance or return of a subpoena or a statement of the evidence or any particulars relating to the introduction of testimony, except the names of the witnesses sworn and examined. Every order affecting a substantial right or directing the performance of a duty and every final order or decree shall appear thereon in full with the signature of the judge attached; but as to other matters, a minute of his approval dated and signed by him at the close of the entries for each day is sufficient.

2. A docket in which there shall be set apart at least two pages to each case by entering thereon its title and number, underneath which there shall be entered the following particulars relating to that case:

On the first page, a register containing the name of each party to any proceeding therein; each guardian or other person having the custody of a party who is under any legal disability; each special guardian appointed for a party and each attorney appearing for a party; together with the post office address of each and a word or words describing his relation to the case, if a party, as for example "heir," "devisee," or "ward," or his relation to the party as "attorney," or otherwise, according to the fact. The name of the attorney, guardian or custodian must immediately follow that of the party whom he represents; and there shall be left sufficient space below the name of each party to admit of such entries from time to time as occasion requires. New parties including persons to whom letters testamentary, of administration or of guardianship are issued shall be registered in like manner. In the margin on the left there shall be entered opposite the name of each special guardian or attorney the date of his appointment or appearance and opposite the name of each new party, the date on which he became a party; and in the margin on the right, when the relation of a party, attorney or other person ceases, a minute to that effect.

On the page following, a chronological index or minute of all the proceedings in that case from the beginning until the final disposition thereof, including a brief statement of the object of each proceeding and a minute of the filing of each pleading or other paper, each preliminary act of the court or judge, the issuance and return of each citation or other process except a subpoena, each hearing or postponement, each intermediate or final order or decree and each act done to carry the same into effect. There shall be entered in the left hand margin the date of each transaction and in the margin on the right, a reference to the book and page of the journal or other record, where the same appears.

3. A record in which there shall be transcribed in full all wills which are admitted to probate and all bonds of executors, administrators and guardians, which are accepted and approved; and all

letters issued to executors, administrators and guardians; but wills may be recorded in a separate book.

4. There shall be appended to each docket a numerical index referring to each case by number and title, containing the number of each case progressively, its title and the number of the page on which it is docketed; also an alphabetical index arranged with reference to the first letter of the family name in the title of each case and containing, in addition to each title, the number of the page on which the docket entries begin. When the cases are not all docketed in one book, there shall be kept in a separate book a general index, both numerical and alphabetical, of similar character, referring in each instance to the book and page of the docket. The general index shall include all cases heretofore commenced in the county court or appearing on the records of the probate court, conforming in relation thereto as nearly as may be to the above requirements.

§ 6194. **Docket, form of.** The docket prescribed by the preceding section shall be substantially in the following form:

Estate of Richard Roe.		
Register.		
	Jane Roe, wife, Athens, N. D.	
June 20,	Mary Roe, minor heir, Athens, N. D.	Revoked Aug. 2. 1894.
1894.	John Bates, custodian, Athens, N. D.	
Aug. 2,	Chitty, special guardian, Athens, N. D.	
1894.	Coke, special guardian, Rome, N. D.	

Estate of Richard Roe.		
Proceedings.		
	Proceeding for appointment of administrator.	
June 20,	John Chitty, Esq., is appointed special guardian for Mary Roe, minor, at her request.	J. 185.
1894.		
June 21,	Mary Roe, by her special guardian, filed petition for administration of said estate.	
1894.		
	Citation issued returnable Aug. 20, 1894.	

§ 6195. **Citation, how issued.** Before issuing a citation, the court shall if necessary, examine the applicant and other witnesses under oath concerning the correct name and post office address of each party to be cited and may issue a subpoena for that purpose. If he is unable after reasonable diligence to ascertain such name, the party may be designated by his relation to the decedent or otherwise, as nearly as may be. Each party and each guardian or attorney for a party, who appears in any proceeding must also be required to give his own name and post office address which shall be entered in the register accordingly and be taken as true thereafter until the court is notified of a change.

§ 6196. **Books to be numbered progressively.** When the docket, journal or record consists of more than one book, all books of the same name shall be numbered progressively from one upwards.

§ 6197. **Cases, to be numbered how.** For convenience in keeping the books of record the cases in each county court shall be numbered in a single and continuing series, beginning with one or with a number exceeding by one the highest number so employed before this code takes effect.

CHAPTER 3.

PARTIES AND PROCESS.

ARTICLE 1.—GENERAL RULES OF PROCEDURE.

§ 6198. **Parties in a case, who are.** The general parties in a case in the county court are the persons interested in the estate or other subject matter, and the executor, administrator or guardian thereof. They are likewise the parties who must be cited in each special proceeding in the case, unless the parties are specially prescribed, but for distinction the party who presents a petition in a special proceeding is known as the petitioner or claimant, and the parties to be cited are known as respondents. If a citation issues for an incidental purpose in the course of the administration, the only parties are those appearing or cited for such purpose.

§ 6199. **Substitution of parties, when.** When an heir or devisee dies or transfers an interest in the estate, his legal representative or successor in interest, grantee or assignee may be made a party in lieu of such heir or devisee; and when a party to a special proceeding dies or transfers his interest, while the same is pending, his legal representative or successor in interest may likewise be substituted at his own suggestion or at the request of another party. Such substitution may be made at any time by order of the court, and without notice when the facts are shown by the allegations of a pleading or affidavit.

§ 6200. **Persons interested may become parties.** Any other person interested in securing or preventing the relief sought in a special proceeding may, by leave of court, become a party and support or oppose the application or pray for affirmative relief consistent with the facts; but leave must not be granted unless his interest sufficiently appears; and this section shall not be construed to affect a right or interest of such person unless he so becomes a party.

§ 6201. **Special proceeding, how to become a party to.** When a statute provides that a person may present a petition or otherwise become a party in a special proceeding, an allegation of his interest in a pleading or affidavit is sufficient for that purpose although his interest is denied, unless he has been excluded from such interest by a decree of the court from which he has not taken an appeal.

§ 6202. **Citation gives jurisdiction. Form of.** The process by which the court obtains jurisdiction in each proceeding of the parties, who do not appear therein, is a citation addressed to such parties by name or other sufficient description, informing them of the petition or other application upon which it issued and the relief thereby claimed or the grounds of the order upon which it is issued and the direction therein given; and the time and place at which they are required to appear before the court to answer the same with such further particulars as may be specially prescribed by statute.

§ 302, Prob. C.
am'd.

§ 6203. **Time for appearance.** The time for appearance must not be more than sixty days from the date of the citation and each citation must be addressed by the style of "The State of North Dakota," and contain the signature of the judge attested by the seal of the court.

§ 302, Prob. C.
am'd.

ARTICLE 2.—SERVICE OF CITATIONS AND OTHER PAPERS.

§ 303, Prob. C.
am'd.

§ 6204. Citations and notices, how served. Citations and notices, issuing for service in any proceeding in a county court, must be served upon the parties personally or in some other mode as hereinafter prescribed.

§ 6205. Service on attorney or guardian, when. When a party on whom service is required has a guardian or attorney of record in the case, service must be made on the guardian or attorney and such service is deemed to be service on the party so represented; except that a citation must be served on a party represented by a guardian if more than ten years of age, as well as on the guardian.

§ 6206. Service by mail, when and how made. After a party has appeared or has been once cited to appear in a case, each citation or notice subsequently issued in the same case may be served by mail upon him or upon his guardian or attorney of record as prescribed by the last section. But service by mail is not sufficient when a citation requires a party to appear in person, or issues upon an application to revoke the probate of a will or set aside a decree awarding a final settlement or distribution, or when the court directs service in some other mode.

§ 6207. Service by publication, when. Service by publication may be substituted for personal service by a direction of the court authorizing such service, and designating a newspaper published at the county seat or some other convenient newspaper in which the citation or notice may be published, in either of the following cases:

1. When the party who is required to make or procure service or his attorney files an affidavit stating that he cannot obtain personal service on a person to be served, because he is unable to ascertain where such person may be found, he having no known place of residence within the state, if the court is further satisfied upon an examination as prescribed in section 6195 that the statements of the affidavit are true.

2. When it is established in like manner or appears upon the records in the case, that the person to be served is a nonresident of this state.

§ 6208. Mode of service indorsed on citation or notice. Every direction for service by publication or other direction given by the court respecting the mode of service must be indorsed on the citation or notice and when so given service must be made in accordance with such direction.

§ 6209. Personal service, how made. Personal service within the state or elsewhere may be made and proved in the manner prescribed by the code of civil procedure for the personal service of a summons.

§ 300, Prob. C.
am'd.

§ 6210. Service by publication, how made and proved. Service by publication is effected by printing and publishing the citation or notice to be served three times, once each week for three successive weeks in the newspaper designated in the order, and is deemed complete on the day of the last publication and may be proved by affidavit made as provided by section 5693 of the code of civil procedure.

§ 6211. **Service by mail, how made and proved.** Service by mail is effected by depositing in the post office a true copy of the citation or notice to be served, inclosed in a sealed wrapper postage paid and directed to the person to be served at his registered post office address; and is proved by the affidavit of any person having knowledge of the facts, or by a statement thereof in the journal when the mailing is done by the judge.

§ 6212. **Citation, when it must be served.** Unless otherwise specially prescribed by law, a citation issued upon a petition must be served at least twenty days before the time therein specified for appearance; every other citation must be served at least five days before the time specified for appearance; and each notice which refers to a future time must be served at least five days before the time so designated. When service is made by publication such time must be computed from the date of the last publication, and when service is made by mail there must be allowed in every instance an additional period of five days computed from the date of mailing.

§ 305, Prob. C.
am'd.

ARTICLE 3. — MANNER AND EFFECT OF APPEARANCE.

§ 6213. **Appearance, how made.** In a county court every party of full age, who has not been judicially declared incompetent to manage his affairs, may appear and prosecute or defend a proceeding in any case either in person or by an attorney regularly admitted to practice in this state, except when he is required to appear or otherwise act in person, pursuant to a special provision of this code; and is held to appear in each proceeding from the time when he has been duly cited to appear.

§ 6214. **Appearance by a minor, how made.** When a minor or a person who has been judicially declared to be incompetent to manage his affairs is a party, he must appear and act by guardian, except when he makes application for the appointment of a guardian; but if he is a respondent, the guardian cannot appear for him until he has been duly served with a citation unless the proceeding relates directly to his estate or he is a minor under ten years of age. If he has no guardian appearing for him, a special guardian must be appointed, as prescribed in the next section.

§ 6215. **Special guardian. Qualifications. How appointed.** A special guardian must be some capable and disinterested person appointed by order of the court with the written consent of the person appointed. Such appointment may be made summarily at any time upon the application of the incompetent party or a relative or friend of such party, for the purpose of commencing a proceeding or maintaining his interest in a pending proceeding; or without an application at any time after he has been duly cited to appear in any proceeding; or wherever in the course of a proceeding in which he is represented by a guardian the court has any reason to suppose that his interest requires the appointment of another guardian. A special guardian so appointed in any case is authorized to appear in the subsequent proceedings therein to which his ward is a party until the appointment is revoked.

§ 308, Prob. C.
am'd.

§ 6216. **Special guardian to qualify same as general guardian.** A special guardian must not receive any money or property belonging to the ward's estate, unless he qualifies in the same man-

§ 311, Prob. C.
am'd.

ner as a general guardian; and a guardian, general or special, cannot act in any matter in which his interest is adverse to that of the ward.

§ 6217. Appearance of guardian, effect of. Subject to the foregoing restrictions and in the absence of fraud, collusion or mistake, prejudicial to the interest of the ward, the appearance in his name of his general or special guardian by leave or direction of the court in any proceeding is deemed to be the appearance of the ward, and has the same effect in that proceeding as if he was competent to appear in person.

§ 6218. Appearance, how effected. An appearance in any proceeding is effected by giving notice of the appearance in open court either orally or in writing or by pleading, or making application therein to the court for an order or direction of any kind.

§ 6219. Appearance, notice of all proceedings. A party who appears or is held to appear as hereinbefore prescribed is deemed to have knowledge of each postponement and all other acts done in the course of the proceeding from the commencement until the final disposition thereof without further notice except such as is imparted by the records of the court.

ARTICLE 4. — COMMENCEMENT OF A SPECIAL PROCEEDING AND THE PLEADINGS THEREIN.

§ 6220. Special proceeding, how commenced. A special proceeding in the county court is commenced by the voluntary appearance and pleading of all the parties, or by the presentation of a petition by a competent party and the issuance of a citation to the other parties; and no proceeding so commenced shall be dismissed for any cause except a failure of proof.

§ 6221. Proceeding by citation. Time to plead. When the proceeding is commenced by citation the respondents shall plead at the time when they are cited to appear unless the court allows further time; but a party in default may be allowed to plead at any time before the hearing is concluded on such terms as the court deems just.

§ 6222. Pleadings in a special proceeding. The pleadings in a special proceeding in the county court are the petition and the answer or cross petition of a respondent. Several parties may unite in a pleading when, as between themselves, their respective interests are not adverse. All pleadings must be filed in writing and every pleading except the answer of a special guardian must be verified as prescribed in the code of civil procedure.

§ 6223. Petition, contents of. A petition must set forth the facts which authorize the special proceeding, entitle the petitioner to relief therein and show the relation of the other parties to the estate or matter in question according to the provisions of this code which relate to that proceeding, with a prayer for the relief which the petitioner claims therein.

§ 6224. Answer, contents of. The answer may admit or deny the allegations of the petition or any material fact therein stated and allege new matter of defense to the whole or any part of the relief claimed.

§ 6225. Pleadings, requisites of. The formal requisites of a pleading are as follows:

1. The caption, which shall contain the name of the county and court, as for example, "Estate of A. B., deceased," or "Guardianship of C. D., minor," and the names of the parties to the special proceeding, distinguishing them as petitioner and respondent, followed by a word or words descriptive of the pleading, as for example, "Petition for probate of will."

2. The statement of facts.

3. The prayer for relief; but no prayer is necessary in an answer except for the purpose of claiming affirmative relief.

4. The signature of the party or his attorney or guardian.

5. The verification.

§ 6226. Issue, how raised. An issue arises upon each of the following allegations of a pleading:

1. Upon each averment in the petition of the execution of a will, or of the death of any person when necessary to jurisdiction, or of any fact alleged as cause for setting aside a decree or order of the court, although not controverted by answer.

2. Upon every other material allegation of a petition which is controverted by answer.

3. Upon every fact alleged in the answer except an admission of a fact alleged in the petition.

ARTICLE 5.—POSTPONEMENT, HEARING AND TRIAL.

§ 6227. Respondent, when a new citation issues. When a respondent fails to appear at the time specified in a citation the court must ascertain from the proofs of service, whether he has been duly cited to appear; and unless the service is deemed sufficient a new citation must be issued to such party or parties and the hearing must be postponed until the time therein specified.

§ 6228. Postponement, when granted or ordered. After issue is joined by the pleadings either party is entitled to a postponement for a reasonable time to procure the attendance or deposition of a witness or otherwise prepare for the trial. A reasonable postponement may also be granted at any time to allow a party to plead, or for any other meritorious cause. A postponement may also be ordered because the judge is sick or otherwise engaged, or because he desires time in which to prepare his decision.

§ 6229. Postponement, how ordered. A postponement may be ordered without a written application and an adjournment of the court from time to time in the progress of a hearing operates as a postponement without a formal order. Every postponement must be to a day certain; but an indefinite postponement or a failure to resume the hearing at the appointed time by reason of the absence of the judge or for other cause does not invalidate or otherwise affect any act previously done, but operates only as a postponement of the hearing until further notice.

§ 6230. Court to try issues, when. After the respondents have had an opportunity to plead the court must try the issues, hear the allegations and proofs of the respective parties, and make such decision upon the facts thereby found as justice and equity requires. Every issue prescribed by section 6226 of this chapter must be tried upon the testimony of witnesses sworn and examined in open court or taken in the form of deposition according to the rules of evidence

§ 307, Prob. C.
am'd

applicable in a civil action except when the same are modified by the following provisions of this article.

§ 6231. Court, powers of. The court may examine the parties and other witnesses and inquire into all the facts and circumstances as to any material fact, although no issue is joined thereon; and may also in its discretion refuse to hear the deposition of any witness residing within the state, who is competent and able to appear and give testimony in person, unless satisfied that the necessary expense or inconvenience of procuring his attendance ought not to be incurred.

§ 6232. Deposition, when taken. When it is satisfactorily shown by affidavit that a material witness within the county is so aged, sick or infirm that his attendance cannot be compelled without endangering his life or health and there is no good reason to suppose that he will be able to attend within a reasonable time to which the hearing may be postponed, the judge shall proceed to the place where the witness is and there take his testimony as in open court; but if the party so requests, the testimony of such witness must be taken in the form of a deposition.

ARTICLE 6.—DECREES AND ORDERS.

§ 289, Prob. C.
am'd.

§ 6233. Decision in a special proceeding contains what. A decision of the county court upon the pleadings and proofs in a special proceeding shall state the material facts found by the court and award relief consistent therewith and with such directions as may be necessary or proper to give effect to the same and is a final determination of the rights of the parties so adjudicated, styled indifferently a decree or final order.

§ 6234. Decree, to contain what. A decree which settles an account must intelligibly refer to a statement of the account on file and contain a summary thereof as settled.

§ 6235. Order, how obtained. Every direction entered of record or given in writing by a county court and not included in a decree is styled an order. Each order must be founded on a written application, unless the court is expressly authorized to make the same at its discretion or otherwise on its own motion. Each application for an order is styled a motion, but when the facts relied on as ground of a motion do not appear of record they must be set forth by affidavit.

§ 6236. Order, contents of. An order based upon facts, within the knowledge of the judge or upon facts proven by the testimony of a witness, must contain a statement or recital of the existence or proof of the facts which authorize the order. But when an order is made upon matter of record, a reference to an affidavit, pleading or other record upon which such facts appear is sufficient.

§ 6237. Order, may be given when. An order prescribing the mode of serving a citation or appointing a special administrator or appraiser, a restraining order, an order requiring a return to be made, or an account to be rendered, or any peremptory or other order which the court is expressly authorized to make without a previous application, may be given at any time when a motion for such order is made or presented.

§ 6238. Order, persons affected to be cited. Before an order can be given upon a motion which does not come within the provisions of the last section, all persons who will be affected by the order must be cited to appear and be given an opportunity to defend against the same, but when a motion is presented in the course of a pending proceeding it is not necessary to cite any person who at the time of presentation appears or is held to appear in such proceeding.

§ 6239. Objections to an order, how taken. At any hearing upon a motion, or in pursuance of a citation issued upon an order, any objection arising upon the facts set forth in the motion or order or otherwise appearing of record may be presented either orally or in writing; but no issue of fact arises unless the respondent answers by affidavit, controverting a material fact set forth as ground of the motion or order or alleging new matter in defense, justification or excuse. When an issue is so presented it may be submitted by consent of the parties upon their respective affidavits, which shall thereupon be treated as depositions; otherwise such issue must be tried in the same manner as the issue specified in section 6226 of this chapter.

§ 6240. Costs, when awarded. Costs may be awarded in a decree or order as follows:

1. When there is no contest, the petitioner if successful is entitled to costs payable out of the estate.

2. When there is a contest, the successful party is entitled to costs payable by the adverse party or out of the estate as justice requires; but if the opposing parties are each in part successful, the award of costs is in all respects in the sound discretion of the court with the limitations hereinafter prescribed.

3. Costs cannot be awarded against an executor, administrator or guardian, personally, unless incurred by his neglect or misconduct.

4. Costs payable out of the estate may be awarded in favor of an executor, administrator or guardian, acting in good faith although unsuccessful.

5. A reasonable sum payable out of the estate must be awarded in favor of a party appearing by a special guardian as compensation for his services; but for the benefit of the estate the court may include a like sum in the amount awarded against an adverse party, or direct the same to be deducted in the final distribution from the share of the party so appearing.

6. Except as provided in the preceding subdivision, the sum awarded as costs in favor of a party must not exceed the amount of his expenses actually and necessarily incurred in procuring the service of process and the attendance of his witnesses or their depositions, and must be determined by the court upon an itemized statement of the expenses so incurred, verified by the affidavit of the party or his attorney and presented at or before the announcement of the decision.

§ 6241. Decree or order for money, how enforced. A decree or final order, which directs the payment of a sum of money by a party personally, may be enforced by an execution against his property issued by the judge and made returnable to the county court, and must require the officer to apply the money thereupon collected in accordance with the order or decree. In other respects the process and mode of collection shall conform to the provisions of the code of civil procedure relating thereto, a decree being for that purpose regarded as a judgment.

§ 6242. Decree or order to perform any act, how enforced.

A decree or order, which requires or prohibits the performance of any act other than the payment of money by a party or other person, may be enforced by serving a certified copy of such order or decree personally on the party or person who is required thereby or by law to obey it and by punishing him for a contempt of court if he refuses or willfully neglects to obey it. A decree or order, which directs the payment or delivery of money to an executor, administrator or guardian entitled to receive it or directs the payment or delivery by an executor, administrator or guardian of money by him received by virtue of his trust, may be enforced in like manner.

§ 6243. Punishment for contempt does not bar action on bond. The punishment of a delinquent for a contempt or the levy of an execution upon his property as prescribed in the last two sections does not bar or suspend an action against him or the sureties on his bond in relation to the same matter, or otherwise affect such action as respects any sum remaining unpaid.

ARTICLE 7. — MISTAKES, OMISSIONS AND AMENDMENTS.**§ 6244. Amendments to process or pleadings allowed.**

No process, return, pleading, order, decree or other proceeding in a county court shall at any stage be disregarded, dismissed, arrested, vacated, revoked or reversed for any defect or want of form; but the court shall proceed and determine always according as the right of the matter shall appear without regarding any such defect or want of form and may amend the same or direct an amendment at its discretion.

§ 6245. Court may amend process, when. A county court may at any time on motion of a party amend its process by correcting a mistake or supplying an omission in any respect, when the defect has not prejudiced and the amendment will not injure the party to or against whom such process was issued; and may in like manner permit a return or other intermediate proceeding to be amended in accordance with the facts.

§ 299, Prob. C.
am'd.

§ 6246. Amendments to pleadings for mistake allowed.

A county court may also on motion of a party and in furtherance of justice at any time permit such party to amend any pleading or motion by adding or striking out the name of a party or by correcting a mistake in the name of a party or a mistake in any other respect or by inserting other allegations material to the case or by conforming the allegations to the facts proved. And no decree or order shall be vacated, revoked or reversed for an omission in the findings of any material fact which actually existed or for the non-averment of any fact in a pleading or other paper if the existence of such fact is established when the objection is taken; but the court shall amend the defect or direct an amendment as the circumstances require.

§ 6247. Amendment, costs allowed when. Every amendment authorized by this article may be made without prejudice to any act previously done to take effect as of the date of the original proceeding, but when an amendment is made in any proceeding after a decision is rendered costs may be awarded against a party in whose favor the amendment operates as the court shall deem just and proper.

§ 6248. Hour intended. Whenever a future day is specified in a citation, notice or order for any purpose, and no particular hour is specified the time intended shall be taken to be the hour of ten o'clock in the forenoon of the day named.

ARTICLE 8. — REHEARINGS.

§ 6249. Rehearing is what. A rehearing is a re-examination of the facts involved in a decree or order upon grounds set forth in a motion or petition to open and vacate or modify the same or some part thereof.

§ 6250. Rehearing, for what causes granted. A rehearing may be granted for either of the following causes:

1. Mistake, inadvertence, surprise or excusable neglect of the party making the application.
2. Any irregularity in the service of process or any fraud or misconduct of the prevailing party or his attorney or agent, or any abuse of discretion on the part of the court, which prevented the applicant from appearing or maintaining a material issue on his part at the former hearing.
3. Newly discovered evidence material to the issue which could not with reasonable diligence have been produced at the former hearing by the party making the application.
4. The nonexistence of any fact necessary to jurisdiction.

§ 6251. Rehearing, application for. An application for a rehearing may be made by motion or petition according to the mode in which the original application was made, and the parties interested must be cited accordingly. But every application upon any ground specified in the first subdivision of the preceding section must be made within thirty days from the date of the order or decree, and every application made upon grounds specified in the second and third subdivisions must be made within one year from the date of the decree or order to which it relates.

§ 6252. Application for a rehearing, must show what. In addition to one or more of the foregoing causes every application for a rehearing must set forth each material issue which the applicant expects to maintain or designate the same by reference to his former pleading and no other issue can be tried. The causes so alleged and the issues so presented may be controverted as in other cases; and after hearing the allegations and proofs of the parties the court shall grant or deny the application as justice and equity require.

§ 6253. Application granted. Duty of court. If the application is granted the court must make a decree or order vacating the former decree or order, or revoking so much thereof as may be necessary and awarding such further relief as the facts may justify.

ARTICLE 9. — APPEALS.

§ 6254. Appeals, who may take and from what. Any party or other person specified in the next section who deems himself aggrieved may appeal, as prescribed in this article, from a decree or from any order affecting a substantial right made by a county court to the district court of the same county. § 312, Prob. C. am'd.

§ 314, Prob. C. am'd. **§ 6255. Appeal, parties to.** Each person who was a party to the proceeding in the county court and each other person, who has or claims in the subject matter of the decree or order, a right or interest which is affected by an appeal must be made a party to the appeal.

§ 315, Prob. C. am'd. **§ 6256. Appeal, how taken.** To effect an appeal the appellant must cause a notice of the appeal to be served on each of the other parties and file such notice with the proofs of service, and an undertaking for appeal in the county court within thirty days from and after the date of the order or decree; but when the party taking an appeal files such notice and announces the filing orally in open court at the time when the decision is given no other or further service of the notice is necessary.

§ 319, Prob. C. am'd. **§ 6257. Appeal not effected, when.** An appeal from an order which directs the payment of a fine as a punishment for a contempt is not effected, unless the amount of the fine is also deposited with the county judge within the prescribed time to abide the order of the appellate court.

§ 331, Prob. C. am'd. **§ 6258. Appeal by executor, administrator or guardian.** An executor, administrator or guardian may appeal without filing an undertaking from a decree or order made in any proceeding in a case in which he has given an official bond; and when he appeals in that manner the bond stands in place of such undertaking. A special guardian may appeal without filing an undertaking although he has not given bond, but the appeal will not operate as a stay unless taken from an order which grants or refuses a transfer of the case.

§ 328, Prob. C. am'd. **§ 6259. Appeal, extension of time.** When the appellant seasonably and in good faith serves a notice of appeal on some of the parties, but through mistake or excusable neglect fails to obtain service on all, or in like manner omits to do any other act necessary to perfect the appeal or effect a stay, the county court upon proofs of the facts by affidavit may, in its discretion, extend the time for perfecting the service or other act and permit an amendment accordingly upon such terms as justice requires.

§ 6260. Parties to an appeal, how brought in. A party specified in section 6255, who was not served with notice by reason of the fact that his interest or claim did not appear upon the records of the county court at the time when the appeal was taken, is deemed to have been duly served from the time when he appears in the district court for any purpose connected with the appeal, or he may be brought in by order of the district court on such notice as the court shall prescribe.

§ 316, Prob. C. am'd. **§ 6261. Appeal on question of law, how perfected.** For the purpose of taking an appeal on questions of law alone, the notice must contain a statement to that effect, and specify the errors in law which the appellant intends to rely on as grounds of the appeal and the time and place at which the appeal will be brought on for trial. Every other notice of appeal is sufficient which designates the party who appeals and the order or decree from which the appeal is taken and the intermediate orders if any upon which the appellant desires a review. And every appeal must be held to have been taken upon the facts and matter in law generally, unless the notice clearly indicates an intention to appeal on questions of law alone, but the appellant may by his notice restrict the appeal to any specific direction or award contained in a decree, if the issue upon which the same depends

can be separately tried and determined without prejudice to any other part of the decree.

§ 6262. Specification of errors on appeal. A specification of errors may contain a reference to each particular error appearing of record in the decree or order in the proceedings on which it is founded to which the appellant objects without giving any reason for the objection and no other form of exception is necessary.

§ 6263. Undertaking on appeal. Stay. An undertaking on appeal must be executed in favor of the appellees in such sum as the county court shall prescribe by the appellant or his agent or attorney in his name and sufficient sureties approved by the judge, to the effect that the subscribers will pay to the parties entitled thereto all costs of the appeal that shall be awarded against the appellant by direction of the district court not exceeding the sum therein stated. But the execution or enforcement of the decree or order appealed from shall not be stayed, unless the instrument contains a further undertaking to the effect that the subscribers will also pay all damages which the appellees or any of them shall sustain by reason of the appeal or a separate undertaking to that effect is executed and filed in like manner. § 317, Prob. C.
am'd.

§ 6264. Undertaking, amount of. The sum prescribed in an undertaking for costs must not be less than one hundred dollars. The sum prescribed in an undertaking for damages shall be such further sum as the judge deems sufficient, and to aid him in determining the same or the sufficiency of the sureties, the judge may examine the sureties and other witnesses under oath. After an appeal is perfected the district court may by order require the appellant to give a new undertaking in a larger sum or with other sureties when the sum specified in the original undertaking is deemed insufficient or a surety is found to be insolvent, has removed from the state or is of doubtful financial responsibility, and unless the order is complied with the appeal may be dismissed or the stay dissolved as the case requires. § 320, Prob. C.
am'd.

§ 6265. Undertaking, obligations of. The prescribed undertaking for the payment of damages creates an obligation on the part of the principal and sureties executing the same to compensate each of the appellees for all pecuniary loss and injury which he shall sustain in consequence of the appeal respecting each and every right or claim which was determined or enforced in his favor by the decree or order from which the appeal is taken so far as the same shall be affirmed or otherwise sustained by the appellate court. When the decree or order directs the appellant or another party to pay or deliver money or other property, or to perform any other act to which the stay applied, all loss and injury sustained by an appellee in consequence of its detention from the time when the direction was given, or by reason of any failure on the part of the appellant or such other party to pay or deliver the same in accordance with the decision or direction of the appellate court, and in as good condition as at the time when he was directed to do so by the county court, is deemed to be sustained in consequence of the appeal. When the order directs the commitment of the appellant or another person for disobeying any order except for the payment of a fine, all loss and injury resulting from his disobedience is likewise deemed to have been suffered in consequence of the appeal. The obligation matures at the time of the decision in the appellate court, but no action can be maintained thereon until ten days thereafter. §§ 315-319,
Prob. C.
am'd.

§ 6266. Appeal stays further proceedings, when. Except when there is an express provision to the contrary in this article, a perfected appeal stays the execution or enforcement of the decree or order appealed from until there has been a determination of the appeal or a dissolution of the stay in the district court; and an appeal from an order granting or refusing a transfer of the case likewise stays all further proceedings in that case. In other respects the decree or order of the county court remains unaffected until reversed or modified by direction of the appellate court.

§ 322, Prob. C.

§ 6267. Appeal does not stay probate of will or letters of administration, when. An appeal from a decree or order admitting a will to probate or granting letters testamentary, or letters of administration, does not stay the issuing of letters when, in the opinion of the county judge manifested by an entry upon the journal, the preservation of the estate requires that such letters should issue. But the letters so issued do not confer power to sell real property by virtue of any provision in a will or to pay or satisfy legacies, or to distribute the property of the decedent until the determination of the appeal.

§ 323, Prob. C.
am'd.

§ 6268. Appeal does not stay order for special administrator or revoke probate of will. An appeal does not stay the execution or enforcement of a decree or order which appoints a special administrator or revokes the probate of a will or suspends or removes an executor, administrator or guardian, or revokes his appointment.

§§ 324-327,
Prob. C.
am'd.

§ 6269. Transcript on appeal, judge perfects. When an appeal is perfected, the county judge must make and certify to the district court a complete transcript of the papers and other records upon which the appeal is taken or so much thereof as may be material together with the notice of appeal and proof of service, the undertaking and other matters of record relating to the appeal; and unless such transcript is delivered to the clerk within ten days, the district court may on motion of any party interested require and compel him to make and certify the same and may in like manner require him to amend the transcript as often as may be necessary or to certify and send up a will or other written instrument in its original form. When all the proofs upon which the court acted appear in the transcript the certificate shall so state.

§ 6270. Appeal docketed in district court, when. Upon the delivery of such transcript and payment of the clerk's fees, the appeal must be docketed in the district court and placed on the calendar of causes for trial according to the date on which it was perfected and without a notice of trial or note of issue at the next term convening, not less than ten days after the taking of the appeal, and must be disposed of accordingly during the term, unless sooner disposed of in pursuance of the provisions of the next section.

§ 6271. Appeal on questions of law. Time of hearing. When the appeal is taken upon questions of law alone, the time and place of hearing specified in the notice of appeal may be any time and place at which an issue of law may be tried in the district court, and a hearing may be had accordingly; provided, however, that such time shall not be less than ten days after the service of the notice, nor later than the first day of the term specified in the preceding section. Upon a failure to obtain a hearing a new notice of the time and place

of hearing may be given as often as may be necessary, and the appeal may, notwithstanding any such notice, be brought to a hearing at any time by an appellee upon a like notice served on the appellant or his attorney of record in the county court.

§ 6272. Appeal to be dismissed, when. If the transcript is not certified to the district court on or before the second day of the term designated in section 6270 and the appellant does not make application for an order requiring the same to be certified forthwith or if the appeal has not been sooner disposed of and the appellant fails to do any act necessary in order to have the same docketed and brought upon the calendar on or before the second day of such term, any appellee may have the same so entered by order of the court upon the production of a certified copy of the decree or order appealed from and the notice of appeal and thereupon the appeal shall be summarily dismissed with ten dollars costs to such appellee, unless the appellant satisfactorily excuses his default and forthwith pays such costs.

§ 6273. Appeal dismissed affirms decree or order. A dismissal of an appeal by order of the district court in pursuance of any provision of this article is in effect an affirmance of the decree or order appealed from.

§ 328, Prob. C.
am'd.

§ 6274. Powers of district court on appeal. At a hearing in the district court on an appeal taken upon questions of law alone the decree or order of the county court shall be reviewed only so far as may be necessary and with a view to correct errors appearing upon the record which injuriously affect a right or claim of the appellant and are specified in the notice of appeal; but when a specification relates to a discretionary award or direction given upon facts shown by the record, the district court has the same discretion that the county court had. Each specification may be overruled or sustained according as the right of the matter appears and the court shall give its decision accordingly, affirming or reversing the decree or order appealed from or reversing in part and affirming as to the remainder, with such directions as may be necessary or proper respecting the decree or order to be entered in the county court.

§ 325, Prob. C.
am'd.

§ 6275. Questions of fact tried de novo. When an appeal is taken generally, all the issues must be tried and determined anew in the district court and the court must hear the allegations and proofs of the parties and determine all questions of law and fact arising thereon according to the mode of trying similar issues originating in that court, except that an issue involved in the probate of a will and issues arising upon a petition for the allowance of a claim or demand for money only must be tried according to the mode of trying issues to a jury if a jury is demanded. When the appeal is taken from a decree or final order, the court may before trying the issues review any intermediate order specified in the notice of appeal, which materially affected the issues and vacate the same or otherwise make such order as the county court ought to have made. And upon every appeal taken generally the court has the same power that the county court had to permit or direct a pleading to be filed or otherwise amend the issues and try the same accordingly, but in other respects, when the proofs on which the county court acted were submitted in the form of affidavits or otherwise appear of record, the appeal must be determined upon the certified transcript.

§ 326, Prob. C.
am'd.

§ 6276. District court findings on appeal. A decision of the district court upon the facts must designate the issues tried and contain the material facts found by the court, or the substance of the verdict returned by the jury, as the case may be, and the direction of the court thereon affirming the decree or order from which the appeal was taken generally, or reversing the same or a distinct part thereof as justice requires and as to any or all of the parties, with specific directions respecting the decree or order to be entered in the county court.

§ 332, Prob. C.
am'd.

§ 6277. Reversal of decree does not affect lawful acts. The reversal of a decree or order of the county court for any cause except for want of jurisdiction does not affect the validity of any act otherwise lawfully done in pursuance of the order or decree, and in the course of the administration by an executor, administrator or guardian while the appeal is pending.

§ 329, Prob. C.
am'd.

§ 6278. Costs, payable how. The costs of an appeal shall be settled and determined by the district court agreeably to the provisions of section 6240 of this chapter except that like fees and disbursements may be allowed as in other cases in that court. The amount of costs so allowed shall be stated in the order or decision which determines the appeal, with a direction specifying the party in whose favor and the party against whom the same shall be awarded by the county court. If the appellant is required to pay costs, the amount thereof shall be awarded by the county court jointly against him and the sureties on his undertaking as prescribed in the next section without an express direction to that effect.

§ 330, Prob. C.
am'd.

§ 6279. Decision on appeal. Enforcement of the decree. Each order or decision of the district court which dismisses or determines an appeal and each preliminary order which affects the merits must be given in writing and filed with the clerk and by him entered of record, after which the clerk shall attach thereto the original of each paper filed by the parties in the district court and each paper certified to that court in the original form and certify and transmit the same without delay to the county court there to become part of the record; but when a stay is granted or effected in the district court, they shall not be transmitted until the stay has expired. Each order or decision so transmitted shall be immediately entered in the journal and a decree or order as the case requires shall likewise be entered by the county court in conformity to the directions of the appellate court and be enforced in the same manner as other decrees or orders of the county court.

ARTICLE 10.—APPROVAL OF UNDERTAKINGS AND BONDS.

§ 81, Prob. C.
am'd.

§ 6280. Bonds, justification and approval of. Every surety in a bond or undertaking prescribed by this code must make affidavit in connection with the instrument to the effect that he is a resident and freeholder of this state, and is worth the sum specified in the instrument in property within the state over and above all his debts and liabilities and property exempt by law from execution. But when there are more than two sureties each may state in his affidavit a sum less than that so specified, if the total amount stated in their affidavits is double the amount of the bond or undertaking, and before approving such sureties, the court must also be satisfied of the truth of their affidavits and may require them to appear before

him and examine them under oath and hear the testimony of other witnesses respecting the matters therein stated or any other fact affecting their financial responsibility.

§ 6281. Money deposit in lieu of sureties. In lieu of the sureties required in an undertaking for costs prescribed by this code, the party giving the same may deposit with the county judge a sum of money equal to the amount of his undertaking to be applied by the court agreeably to the provisions of the instrument in payment of any costs thereafter awarded against him, or restored to him after he is exonerated from such payment as the event shall determine.

§ 6282. Bond, approval to be indorsed. When a bond or undertaking is approved, the judge shall indorse his approval thereon, and file and preserve the instrument in his office. Except when otherwise specially provided, all bonds and undertakings in anywise required by the provisions of this code shall run to the state of North Dakota as nominal payee, and an action may be brought and maintained on any such bond or undertaking by and in the name of any person injured by any violation of the provisions thereof.

CHAPTER 4.

SPECIAL PROCEEDINGS FOR THE PROBATE OF WILLS AND OTHER PURPOSES.

ARTICLE 1.—PRODUCTION AND CUSTODY OF A WILL.

§ 6283. County judge opens will and gives notice. Every county judge, having the custody of a will or to whom a will is delivered, must after the death of the testator publicly open and examine such will and file the same in his office and give notice thereof to the persons interested in its provisions or deliver such will to the county judge having jurisdiction of the case. § 700, Civil C.
am'd.

§ 6284. Custodian to deliver will. Liability for failure. Every other person having the custody of a will must immediately after receiving knowledge or information of the death of the testator deliver the same to the judge of the county court having jurisdiction of the case; and if he neglects to perform that duty he shall be liable to each and every person interested in the will for all damages caused by such neglect. § 10, Prob. C.
am'd.

§ 6285. Compulsory production of will, when. When a party makes affidavit that any person has possession of a will which he neglects or refuses to deliver as prescribed in the last section, the county court may cite him to appear forthwith or at any future time in its discretion, and upon his appearance may examine him under oath and compel him to make a full disclosure in relation to such will. If it appears from his examination or from the testimony of other witnesses that he has any will of the decedent in his possession or under his control, he must be ordered to deliver the same to the court and may be committed to the jail of the county until he complies with the order. § 14, Prob. C.
am'd.

§ 43, Prob. C.
am'd.

§ 6286. Limitations affecting probate of nuncupative will. Before a petition can be entertained for the probate of a nuncupative will a statement of the testamentary words or other substance in writing, verified by one of the witnesses within thirty days after they were spoken, must be delivered to the county judge having jurisdiction of the case. A delivery of such statement may be compelled in the manner prescribed in the last section and the statement must be filed in the same manner as a written will.

§ 6287. Original will, where filed. Every original will or statement of the substance or provisions of a will filed as prescribed in this chapter shall remain in the office of the county judge except when certified to the district court on appeal.

§ 6288. Will unexecuted until probated. A will, foreign or domestic, shall not be carried into effect until admitted to probate as hereinafter prescribed.

ARTICLE 2.—SPECIAL PROCEEDINGS FOR THE PROBATE OF A WILL.

§ 42, Prob. C.
am'd.

§ 6289. Wills, original and nuncupative, when probated. A special proceeding for the probate of a written will may be commenced at any time within six years after the testator's death, or if the will is not made known within that time, then within one year after its discovery. A proceeding for the probate of a nuncupative will must be commenced within six months after the testamentary words are spoken.

§§ 11, 12, 38, 47,
Prob. C.
am'd.

§ 6290. Petition to probate, contents of. A petition for the probate of a will shall, in addition to the facts prescribed in section 6223 of this code, give a brief description of the will referring to the same as filed or allege that it has been lost or destroyed and set forth its provisions in full, and must set forth the state and county in which the property is situated and allege its probable value distinguishing between personal and real property and the probable yearly value of the rents, profits and income of the real property, and may pray for the appointment of the executor named in the will or allege his disability or refusal to act and pray for the appointment of a testamentary administrator. Such petition may be presented by any party designated in the next section or by a creditor of the testator.

§ 32, Prob. C.
am'd.

§ 6291. Citation issues to all interested. The parties who must be cited upon a petition for the probate of a will include the surviving husband or wife, if any, all the heirs, of the testator, the devisees and legatees named therein, all persons in being who would take an interest in any portion of the property under the provisions of the will and the executor or executors, trustee or trustees named therein.

§§ 15, 16, Prob.
C.
am'd.

§ 6292. Service of notice to persons interested, when another will exists. When there is reason to suppose that there may be another will of the testator in existence or persons interested in the estate who are not named in the petition, the court shall annex to the names of the respondents to whom the citation is addressed the words "and all other persons interested" and direct service thereof by publication in addition to the service otherwise prescribed by this code.

§ 6293. Proceedings, when probate of will is contested.§§ 22, 47.
Prob. C.
am'd.

A respondent may by his answer deny the execution of the will or the competency of the decedent to make the same or allege any facts showing that it has been revoked, or was procured by duress, menace, fraud, undue influence or other cause affecting its validity, and may at his election pray for the appointment of an administrator; or he may allege any ground of objection there may be to the appointment of the proposed executor or testamentary administrator and pray the appointment of some other person. He may also make his answer a cross petition and thereby allege the execution of another will by the decedent of earlier or later date, and pray that the same be admitted to probate instead of that proposed by the petition. A cross petition may be answered in the same manner as a petition; but if there are new parties interested in the will thereby proposed, who do not appear, they must before the trial be cited to appear as in other cases.

§ 6294. Executor to accept trust. Each person named in a will as executor shall state in his pleading whether or not he is willing to accept the trust.

§ 13, Prob. C.
am'd.

§ 6295. Probate admitted, if no contest, how. The court may in its discretion grant the probate of a written will, unless the same is contested on the testimony of one only of the subscribing witnesses, if he testifies that the instrument was subscribed by the testator or was acknowledged and declared by him to be his will as prescribed by law, and that he believes that the testator was at the time of sound mind.

§ 20, Prob. C.
am'd.

§ 6296. Will contested. Necessary witnesses. If the will is contested, all the subscribing witnesses to a written will or all the witnesses to the making of a nuncupative will, who are within the state and are competent and able to testify must be produced and examined before probate thereof can be granted.

§ 24, Prob. C.
am'd.**§ 6297. Absence of subscribing witness to be explained.**

Before the presence of a witness whose examination is required by either of the two preceding sections can be dispensed with, it must be shown by affidavit or other competent evidence to the satisfaction of the court that he is dead or disqualified or that he cannot after due diligence be found within this state or if within the state that he is so aged, sick or infirm that his presence cannot safely be required.

§ 6298. Lost will. Special requisites of proof. A will alleged to have been lost or destroyed shall not be admitted to probate unless proven to have been in existence at the time of the testator's death or fraudulently destroyed in his lifetime, nor unless the tenor of its provisions is clearly established by the testimony of at least two credible witnesses.

§ 39, Prob. C.
am'd.**§ 6299. Evidence of the genuineness and execution of the will.**

Subject to the foregoing restrictions the court may admit the testimony of any competent witness respecting the execution of the will, the capacity of the testator or other material fact, and may also admit proof of the handwriting of the testator or of a subscribing witness and such other evidence as is admissible in courts of justice to establish or disprove written contracts in similar cases. The court shall also inquire particularly into all the facts and circumstances and may in its discretion require proof of the circumstances attending the delivery and possession of the instrument and shall grant the

§ 24, Prob. C.
am'd.

probate if satisfied upon all the proofs of the genuineness of the will, the competency and freedom of the testator to make the same and the validity of its execution.

§ 23, Prob. C.
am'd.

§ 6300. Probate of. Findings and conclusions of court. The decree shall state whether the probate was contested and if so by whom, and shall contain the findings of the court upon the testimony and grant or deny the probate accordingly with proper directions, if the probate is granted, respecting the appointment and qualification of an executor or testamentary administrator. If there is a cross petition the decree shall in like manner grant or deny the probate of the will thereby proposed or grant administration as the case requires.

§ 26, Prob. C.
am'd.

§ 6301. Certificate of probate. Upon granting the probate of a will the court must indorse on or attach to the instrument a certificate of the probate signed by the judge and attested by the seal of the court. If the will is nuncupative, such certificate shall be indorsed on or appended to the statement of the substance thereof on file.

§ 40, Prob. C.
am'd.

§ 6302. Statement, when will lost. When probate of a lost or destroyed will is granted, the provisions thereof as established by the evidence must be distinctly stated in writing and certified by the judge accordingly and filed as other wills are filed.

§ 27, Prob. C.
am'd.

§ 6303. Will or certified statement to be recorded. The will or the certified statement of the substance or provisions thereof as the case may be and the certificate of proof must be entered at length in the record of wills.

• §§ 31, 32, 33, 34,
Prob. C.
am'd.

§ 6304. Contest when will admitted to probate, how. After a will has been admitted to probate any person interested may contest the same on a rehearing for like causes and to the same extent as upon the former hearing or for any cause affecting the competency of the former proof and relief may be granted accordingly.

§ 37, Prob. C.
am'd.

§ 6305. Probate conclusive, when. A decree which grants the probate of a will is conclusive if the court had jurisdiction, unless reversed on appeal or vacated on a rehearing applied for within one year saving to minors and persons of unsound mind or otherwise incompetent a like period of one year after their respective disabilities are removed.

§ 45, Prob. C.
am'd.

§ 6306. Executors, who appointed. When a will is admitted to probate, every person named therein as executor who has consented to act and is legally competent to discharge the trust shall be appointed as such.

§ 46, Prob. C.
am'd.

§ 6307. Administrator appointed, when. A testamentary administrator having the powers and duties of an executor shall be appointed:

1. If there is no executor named in the will and the appointment is necessary for the purpose of carrying the will into effect or settling claims chargeable against the estate.

2. When an executor named in the will is not competent or does not consent to act or fails to qualify and enter upon his duties and there is no other executor competent and willing to act.

§§ 49, 104,
Prob. C.
am'd.

§ 6308. Administrator appointed when executor dies or resigns. When an executor dies, resigns or is removed after entering upon his duties and there is no executor competent to complete the execution of the trust or when no appointment is made at the time of the probate, a testamentary administrator may be appointed in a special proceeding for that purpose.

§ 6309. Minor named as executor, when can be appointed.§ 50, Prob. C.
am'd.

An executor named in a will, who cannot be appointed for the reason that he is under age or a nonresident when the will is probated, may thereafter in a special proceeding apply for and receive the appointment, if otherwise competent, at any time before the trust is fully executed and if thereupon letters have in the meantime been issued to a testamentary administrator, they must be revoked.

§ 6310. Executor, duties of. It is the duty of an executor named in a will to present the same for probate, but he has no authority before letters are issued to do any other act except to preserve the assets of the estate coming into his hands and apply so much thereof as may be necessary in payment of the expenses of the testator's burial. Executors appointed by the court after duly qualifying and receiving letters have, subject to the provisions of this code, all the authority delegated by the will to the exclusion of those not appointed or failing to qualify. On the death, resignation or removal of an executor such authority devolves upon the surviving executor or executors, or if there is no surviving executor upon the succeeding testamentary administrator.

§ 6311. Restraint of former administrator, when.§ 41, Prob. C.
am'd.

While a proceeding for the probate of a will is pending or while an application for a rehearing is pending in such proceeding, if administration had previously been granted upon the estate or letters testamentary issued, the court may by order restrain the administrator or executor from doing any act detrimental to the interests of a party claiming under the proposed will or claiming adversely to the will which is contested in the application for a rehearing, as the case may be.

§ 6312. Letters of administration revoked.§ 101, Prob. C.
am'd.

When after letters of administration on the ground of intestacy have been granted a will is admitted to probate or when after letters have been issued upon a will the probate thereof is revoked or a subsequent will is admitted to probate, the decree granting or revoking probate must revoke the former letters.

ARTICLE 3.—SPECIAL PROCEEDINGS FOR THE APPOINTMENT OF ADMINISTRATORS.

§ 6313. Administration, when granted.§ 56, Prob. C.
am'd.

When a person dies leaving property within this state which he has not disposed of by will, administration of the estate may be granted as hereinafter prescribed.

§ 6314. Administration, when not granted.

Administration shall not be originally granted in any case in a proceeding commenced after the lapse of six years from the death of the decedent or from the time when his death became known.

§ 6315. Administration, who entitled to.§ 56, Prob. C.
am'd.

The parties who must be cited in a special proceeding for the appointment of an administrator are the surviving husband or wife if any and all the heirs of the decedent; but administration may be granted upon the petition of any person hereinafter mentioned, those of each class being entitled to preference in the following order:

1. The surviving husband or wife of the decedent.
2. His heirs.
3. His creditors.

§ 6316. Time to apply for administration. To each of the above classes in succession a period of ten days commencing with the death of the decedent is allowed within which to apply for administration before a petition can be presented by any person of a subsequent class.

§ 62, Prob. C.
am'd.

§ 6317. Petition for administration, contents of. A petition for administration shall contain a statement of the probable value of the estate distinguishing between personal and real property and of the probable yearly value of the rents, profits and income of the real property.

§ 65, Prob. C.
am'd.

§ 6318. Petition, who may contest. Any person interested may answer the petition and allege any ground of objection that may exist to the granting of administration or to the appointment of the proposed administrator; or allege his own right or claim to the administration and pray for appointment accordingly.

§§ 59, 70,
Prob. C.
am'd.

§ 6319. Person entitled to administration may waive right. A party entitled to the administration whether personally competent to receive the appointment or not may by his pleading nominate some other person for appointment in his place.

§ 69, Prob. C.
am'd.

§ 6320. Proof of intestacy and value of property requisite. Before granting administration the court must be satisfied by competent testimony of the death of the person whose estate is in question, and may in its discretion require proof as to whether or not he left a will and of the time, place and circumstances of his death, his residence at the time, the character, situation and value of the property, the fact of the intestacy or any other material fact.

§§ 57, 58, 66, 68,
Prob. C.
am'd.

§ 6321. Preferences. Equally entitled. Power of court. Administration may be granted to an applicant or to one of several applicants according to the prescribed order of preference, without regarding any party having an equal or a better right who fails to assert his claim; and when there are several applicants of the same class the appointment may be awarded according to their relative fitness. But in every case, when the welfare of the estate manifestly so requires, an heir may be joined with a surviving husband or wife or two or more applicants of the same class may be united in the administration or the court may in its discretion appoint some suitable and discreet person who is disinterested as between the parties.

§ 6322. Decree to fix amount of bond. A decree granting administration shall prescribe the sum in which bond shall be given and may limit the time in which the person receiving the appointment shall qualify or the time within which each of several applicants may successively qualify upon the failure of those having precedence to qualify and enter on the discharge of their duties.

§§ 71, 72, 73, 74,
Prob. C.
am'd.

§ 6323. Rehearing for revocation of administration. After administration has been granted to any person other than the surviving husband or wife, any party having a better right to the same, which he failed to allege in the original proceeding may for that cause alone obtain a rehearing at any time within one year for the purpose of asserting such right and if his right is established he shall receive the appointment and the former letters shall be revoked.

§ 6324. Authority of administrator. An administrator has only the authority prescribed by statute or conferred on him according to law by a decree or order of the county court.

ARTICLE 4. — APPOINTMENT OF SPECIAL ADMINISTRATORS.

§ 6325. Special administrators, appointed when. A special administrator shall be appointed when necessary or proper for the protection of the property or the rights of creditors or other persons interested in the estate, in either of the following cases: § 94, Prob. C. am'd.

1. On the motion of a party or a creditor of the decedent and without citation or notice while a proceeding for probate or administration is pending, or after a decree granting the probate or administration when there is delay in issuing letters in consequence of the temporary absence from the state of the executor or administrator entitled to the same or for any other cause; or after letters have issued when the executor or administrator dies or is suspended, or his letters are revoked and there is delay in issuing letters to a successor.

2. In a special proceeding in which probate or general administration is denied because the death of the person whose estate is in question is not satisfactorily proved; but he is shown to have disappeared under circumstances which afford reasonable grounds to believe either that he is dead or has been secreted, confined or otherwise unlawfully made away with.

3. On the application of a state's attorney or of a creditor of the decedent in a special proceeding for that purpose when a person of whose estate the court has jurisdiction dies intestate and after diligent inquiry no person can be found who is entitled to succeed to his property.

§ 6326. Administration, when no heirs known. Duty of state's attorney. In a case specified in the third subdivision of the preceding section it is the duty of the state's attorney of the county in which the jurisdiction lies to petition for administration as soon as the facts come to his knowledge. If the application is made by a creditor such state's attorney must be cited as a party. The citation must also be addressed generally to all persons interested in the estate of the deceased and published as prescribed for service in that mode. At the hearing the fact of intestacy shall be presumed unless the contrary appears.

§ 6327. Special administrator, who may be appointed. A special administrator may be any person competent to serve as administrator approved or selected by the court with due regard to the rights of parties claiming letters or otherwise interested in the estate. § 96, Prob. C. am'd.

§ 6328. Special administrator, authority and duties of. A special administrator has the same authority as a general administrator to take into his possession personal property, to secure and preserve it, to collect debts due the estate, and to take charge of the real estate and preserve it from waste or other injury and receive the rents, profits and income thereof, and for either of those purposes he may maintain any action or special proceeding. He must also make an inventory and render an account and may sell perishable property or do any other act which he may be specially required to do by direction of the court but cannot act generally in matters pertaining to the settlement of the estate. §§ 98, 100, Prob. C. am'd.

§ 6329. **Special administrator. Notice to creditors.** After the expiration of six months from the time when letters were issued to a special administrator he may be directed the same as a general administrator under directions of the court to publish the notice requiring creditors of the decedent or absentee to present their claims and the publication thereof shall have the same effect as if published by an executor or general administrator.

§ 6330. **Special administrator. Authority after notice to creditors.** From the time when he is directed to publish notice to creditors as prescribed by the preceding section, a special administrator has the same authority as an executor or general administrator to approve and adjust claims, set off the exempt property and make provision for the payment of debts and charges against the estate by sale of so much of the property as may be necessary for that purpose and apply the proceeds accordingly.

§ 99, Prob. C.
am'd.

§ 6331. **Special administration ceases, when.** When letters testamentary or of general administration on the estate are granted the powers of the special administrator cease and he must forthwith deliver to the executor or administrator all the property and effects of the decedent remaining in his hands.

ARTICLE 5.—FOREIGN WILLS AND LETTERS OF ADMINISTRATION.

§ 28, Prob. C.
am'd.

§ 6332. **Probate of foreign will. Proceedings.** A will of a testator who was not a resident of this state at the time of his death, which has been probated in any other state or country may be admitted to probate as prescribed in this article in any county of this state in which any property devised by the will is situated upon the petition of the executor or any person interested in such property by, through or under the provisions of the will, when the petition is accompanied by a duly authenticated copy of such will and of the original record or certification of probate. When probate is or has been so granted, ancillary letters testamentary or of testamentary administration as the case requires, may likewise be granted on the petition of the executor or testamentary administrator if accompanied by a duly authenticated copy of the original letters or record of his appointment.

§ 6333. **Ancillary letters, when.** When administration has been granted in any other state or country upon the estate of an intestate who was not a resident of this state at the time of his death, ancillary letters of administration may be granted as prescribed in this article by the county court of any county in which there are assets belonging to the estate upon petition of the administrator, if accompanied by a duly authenticated copy of the original record of the granting of administration and of his appointment.

§ 29, Prob. C.
am'd.

§ 6334. **Citation to whom notice given.** A citation issued upon the presentation of any petition specified in the two preceding sections may be addressed to all creditors of the decedent and other persons interested, and a direction for service by publication shall be indorsed thereon without the affidavit required in other cases and service in accordance with such direction shall be deemed sufficient. At the hearing any person interested as a creditor or otherwise may appear and maintain any valid objection to the competency of the proof or other defense to the application.

§ 6335. **Foreign will, not probated when.** A will shall not be admitted to probate under the provisions of this article, unless it appears to have been executed according to law and the court is further satisfied that the authentication of the probate is sufficient and that the probate was granted by a court of competent jurisdiction and remains in force. A decree admitting the same to probate shall contain the findings of the court to that effect and shall have the same force and effect as if the probate was originally granted thereby. § 30, Prob. C. am'd.

§ 6336. **Ancillary letters not granted, when.** Ancillary letters shall not be granted to an executor or testamentary administrator making application therefor, unless the court is satisfied by competent evidence that the original appointment has not been revoked. The court may also refuse to issue letters to such applicant when objection is made for nonresidence or any other cause which would disqualify him for appointment in this state and it appears that the rights of creditors having claims payable in this state or other persons residing therein, who are interested in the estate may be prejudiced by his appointment; if letters have been issued such letters may be revoked for like cause.

§ 6337. **Ancillary letters.** Ancillary letters shall not be issued to an administrator making application therefor, unless the court is satisfied that the proofs accompanying the petition are duly authenticated, that the administration was granted by a court of competent jurisdiction and that the original appointment remains in force; or in any case when it appears that another county court of this state has acquired jurisdiction of the estate for any purpose or when a resident of this state entitled to administration therein as a creditor or otherwise prays that letters may be issued to himself or some other resident of the state.

§ 6338. **Letters may issue, when.** When letters are refused for any cause specified in the two preceding sections except a failure to establish the original probate or grant of administration, letters may be issued to a competent resident of the state as in other cases; and when probate is granted as herein prescribed and no application for letters is made by the executor or testamentary administrator, letters may be issued as in a case when no executor is named in a will if necessary to give effect to the provisions of the will or protect the rights of creditors residing in the state.

§ 6339. **Executors and administrators to qualify, how.** An executor or administrator appointed under the provisions of this article must qualify in the same manner as other executors or administrators and thereafter has like powers, duties and obligations respecting the property of the decedent within this state.

§ 6340. **Foreign executor or administrator to appoint agent.** Every executor, administrator or guardian appointed in, but residing out of the state shall before entering upon the duties of his trust, in writing, appoint an agent residing in the county where he is appointed and shall by such writing stipulate and agree that the service of any legal process against him as such executor, administrator or guardian if made on said agent shall be of the same legal effect as if made on himself personally within the state. Such writing shall give the proper address of such agent and shall be filed in the office of the judge of the county court where such appointment is made and the notice to creditors shall state the name and address of such agent. § 1, c. 106, 1883. am'd.

ARTICLE 6.—SPECIAL PROCEEDINGS FOR PROBATE OF HEIRSHIP.

§ 1. c. 51, 1893.
am'd.**§ 6341. Petition to establish heirship. Proceedings.**

When a person dies leaving real property within this state, which he has not disposed of by will and there are no debts of the decedent which are payable to residents of this state, after the expiration of one year from the date of his death, if no county court of this state has acquired jurisdiction of his estate for the purposes of administration, any heir or other person deriving title from or through an heir or heirs of such decedent may present to the county court of the county in which he last resided or if he was not a resident of this state at the time of his death, to the county court of the county in which the real property or some part thereof is situated a petition alleging the facts which authorize the special proceeding, according to the foregoing provisions with a particular description of the real property, and stating the interest of the petitioner and the interest or share of each heir according to his relationship to the deceased and praying for a decree determining the right of succession to the property. Upon the presentation of such a petition a citation shall be issued to all the heirs of the decedent.

§ 2. c. 51, 1893.
am'd.**§ 6342. Petition, hearing of. Allegations established.**

At the hearing any person interested may appear and answer the petition; but this section does not affect a right or interest of any person except an heir unless he so becomes a party to the special proceeding. The answer of a respondent may allege any valid defense to the petition, any part of the same or any right or interest which the respondent claims in the property. The allegations of the petition must be established to the satisfaction of the court by competent testimony before a decree can be entered although no issue is joined by answer.

§ 3. c. 51, 1893.
am'd.

§ 6343. Decree, when to issue. Effect of. When the facts are established to the satisfaction of the court a decree shall be given specifying who are the heirs of the decedent and what are the interests or shares of the parties, respectively, in the property and declaring the right of succession accordingly. Such decree is conclusive upon the parties, and their successors in interest, subject however, to such disposition of the property as may be made in any subsequent proceeding in the same court in pursuance of the probate of a will or grant of administration.

§ 4. c. 51, 1893.
am'd.

§ 6344. Record of the decree. A certified copy of such decree may be recorded in the office of the register of deeds of each county in which the real property is situated in the manner prescribed by law for recording a deed.

§ 5. c. 51, 1893.
am'd.

§ 6345. Costs, how paid. The costs of such proceeding must in every case be paid by the petitioner.

CHAPTER 5.

REQUISITES FOR QUALIFICATION.

ARTICLE 1.—QUALIFICATIONS, REMOVAL AND DISCHARGE OF EXECUTORS, ADMINISTRATORS AND GUARDIANS.

§ 6346. **Executor, administrator, guardian, who competent for.** No person under twenty-one years of age or other person who is incapable by law of making a contract or has been convicted of a felony, is competent to serve as executor, administrator or guardian; and no person shall be appointed as such, who is not in good faith a resident of this state or was a partner of the decedent at the time of his death or is by the court found unfit to discharge the duties of the trust by reason of drunkenness, improvidence, mental or physical infirmity or lack of integrity. A married woman must not be appointed administratrix, but may be appointed executrix, and serve as such independent of her husband if married at the time of the testator's death. §§ 46, 48, 60, 61. Prob. C. am'd.

§ 6347. **Oath and bond of executor.** Before letters are issued to an executor, administrator or guardian he must qualify by taking an oath and giving bond as prescribed in this article; and before letters are issued to any person who has in his possession or under his control any money or property belonging to the estate he may be required to exhibit an inventory or otherwise render a satisfactory account of his doings with such property. A failure to comply with the foregoing requirements within such time as the court allows is a relinquishment of the appointment. § 75. Prob. C. am'd.

§ 6348. **Oath, form of, where filed.** Every executor, administrator or guardian must take and subscribe an oath administered by some competent officer and file the same with the county judge to the effect that he will faithfully and according to law to the best of his ability perform all the duties of his trust. § 75. Prob. C. am'd.

§ 6349. **Bond. Justification.** Every executor, administrator or guardian must give bond to the state of North Dakota for the benefit of all persons interested in the estate in such sum as the court prescribes, with sufficient sureties to be approved by the judge, and conditioned for the faithful discharge of all the duties of the trust imposed on him by law or by order of the court according to law. Except as otherwise specially prescribed by law the required sum must not be less than twice the aggregate value as ascertained by the court of the personal property and the rents, profits and income for one year of the real property, belonging to the estate. Every bond must be held to be the joint and several contract of the principal and sureties executing the same notwithstanding any express provisions therein to the contrary. §§ 76, 78. Prob. C. am'd.

§ 6350. **Bond for sale of real estate.** Whenever an executor, administrator or guardian is authorized to sell or mortgage any real estate, he must in like manner be required to give an additional bond in a sum equal to twice the probable amount to be realized upon such sale or mortgage. But such additional bond may be dispensed with by the decree authorizing such sale or mortgage, when it appears to the satisfaction of the court that the former bond of such executor, § 77. Prob. C. am'd.

administrator or guardian is at least twice the value of the estate remaining in his hands together with the amount of such increased liability and is in all other respects sufficient.

§ 88, Prob. C.
am'd.

§ 6351. Bond waived by will. When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue and sales of real estate be made and confirmed without any bond unless the court for good cause requires one to be executed; but the executor may at any time afterwards if it appears from any cause necessary or proper, be required to file a bond as in other cases.

§ 79, Prob. C.
am'd.

§ 6352. Separate bond. When two or more persons are appointed as executors, administrators or guardians, the court may require and take a separate bond from each.

ARTICLE 2. — FORM OF LETTERS.

§ 6353. Letters of administration. When an executor, administrator or guardian has duly qualified, letters shall issue accordingly under the seal of the county court upon which there shall be indorsed if required a direction for the publication of the notice to creditors prescribed by this code.

§ 53, Prob. C.
am'd.

§ 6354. Letters testamentary, form of. Letters testamentary may be substantially in the following form:

State of North Dakota, }
County of..... } ss.

Whereas, the last will of A. B., deceased, a copy of which is hereto annexed has been duly proved and recorded in the county court of said county, and C. D. has been appointed executor thereof and has duly qualified pursuant to the order of said court, of date.....

Now, therefore, know ye, that he, the said C. D., is authorized to enter upon the discharge of his duties as such executor and continue therein until the revocation of these letters.

Given with the seal of said court hereto affixed the....day of....
A. D. 189...

[Seal.]

(Official signature of the judge.)

§ 54, Prob. C.
am'd.

§ 6355. Letters of testamentary administration, form of. Letters issued to a testamentary administrator may be substantially in the following form:

State of North Dakota, }
County of..... } ss.

Whereas, the last will of A. B., deceased, a copy of which is hereto annexed has been duly proved and recorded in the county court of said county, and C. D. has been duly appointed testamentary administrator to execute the same, and has duly qualified pursuant to the order of said court of date.....

Now, therefore, know ye, that he, the said C. D., is authorized to enter upon the discharge of his duties as such testamentary administrator and continue therein until the revocation of these letters.
(Conclude as above.)

§ 55, Prob. C.
am'd.

§ 6356. Letters of administration, form of. Letters of administration, either general or special, may be substantially in the following form:

State of North Dakota, }
County of..... } ss.

Whereas, A. B. was appointed administrator (or special administrator) of the estate of C. D., deceased, by order of the county court of said county of date..... and has duly qualified accordingly;

Now, therefore, know ye, that he, the said A. B., is authorized to enter upon the discharge of his duties as such administrator (or special administrator) and continue therein until the revocation of these letters. (Conclude as above.)

§ 6357. Letters of guardianship, form of. Letters of guardianship may be in the form prescribed in the last section with such variations as the facts require.

ARTICLE 3.—NEW BONDS AND NEW SURETIES.

§ 6358. Bond becoming insufficient. Proceedings. Any creditor or other person interested in the estate may present to the county court an affidavit alleging that a surety in any bond taken as prescribed in this chapter is insufficient or has removed or is about to remove from the state or that the bond is inadequate in amount and demanding that the executor, administrator or guardian may be required to give a new bond in a larger amount or new or additional sureties as the case requires, or in default thereof that he may be removed from his office and thereupon, if there is reason to believe that the statements of the affidavit are true, such executor, administrator or guardian may be cited to appear and show cause why the demand should not be granted.

§§ 84, 85.
Prob. C.
am'd.

§ 6359. Judge issues citation as to insufficiency of bond. When it comes to the knowledge of the county judge that the bond of an executor, administrator or guardian is inadequate or that a surety therein is insufficient or has removed or is about to remove from the state and no application is made as provided in the last section, an order shall be made requiring such executor, administrator or guardian to show cause why he should not be required to give further security upon which he shall be cited to appear as upon the application of a party.

§ 89, Prob. C.
am'd.

§ 6360. Hearing and order. If it satisfactorily appears at the hearing that the security is inadequate or insufficient, the court must make an order requiring the executor to give new or additional sureties or a new bond in a sufficient amount as the case requires, within a reasonable time not exceeding ten days and directing that in default thereof his letters be revoked. If he fails to give such security, the court must make a supplemental order removing him and revoking his letters accordingly.

§§ 86, 87.
Prob. C.
am'd.

§ 6361. Release of sureties on application. Any or all of the sureties in a bond taken as prescribed in this chapter may present to the county court a petition praying to be released from responsibility on account of any future breach of the condition of the bond, and thereupon the executor, administrator or guardian must be cited to appear in person and give new security. If he files in the office of the county judge a sufficient bond with new sureties to the satisfaction of the court at the time specified in the citation or thereafter within such reasonable time not exceeding ten days as the court fixes, the court must make a decree releasing the petitioner from liability

§§ 90, 91, 92.
Prob. C.
am'd.

upon the bond for any subsequent act or default of the principal otherwise he must make a decree removing him and revoking his letters.

ARTICLE 4.—REMOVAL, SUSPENSION AND DISCHARGE OF EXECUTORS, ADMINISTRATORS AND GUARDIANS.

§ 6362. Decree granting or revoking probate of will, revokes former letters. When a will is admitted to probate after letters of administration have been issued or when the probate is revoked after letters have been issued, the decree granting or revoking probate shall revoke the former letters.

§ 108, Prob. C.
am'd.

§ 6363. Causes for revocation of letters. An executor, administrator or guardian may also be removed by a decree of the county court revoking his letters upon satisfactory proof of the existence of either of the following causes:

1. Any legal disability which renders him incompetent or unfit to act as such executor or administrator when the same has been incurred since his letters were issued, or was not alleged in the proceeding in which he was appointed.

2. Any wrongful act or omission on his part conducive to waste or misappropriation of the estate or affording opportunity therefor.

3. Willfully refusing or neglecting without sufficient cause to obey any lawful direction of the county court or any provision of law relating to the discharge of his duties.

4. In the case of an executor, when by the terms of the will his office ceases upon a contingency which has happened.

5. In the case of a special administrator appointed upon the estate of an absentee, when it is shown that the absentee is living and capable of resuming the management of his affairs or that an executor or administrator has been appointed upon the estate by another court having jurisdiction thereof.

§ 109, Prob. C.
am'd.

§ 6364. Removal of executor, administrator or guardian, how. A petition alleging the facts and praying for the removal of an executor, administrator or guardian pursuant to the provisions of the preceding section may be presented by a creditor or other person interested in the estate and may contain a prayer for the appointment of a successor and if the court deems the allegations sufficient a citation shall issue to the executor, administrator or guardian and all other persons who by the terms of a will or by law are entitled to any portion of the estate.

§ 110, Prob. C.
am'd.

§ 6365. Court may remove, when. When the facts which authorize a removal come to the knowledge of the court and no application is made as above provided, the court may make an order requiring the executor, administrator or guardian to show cause why he should not be removed upon which he shall be cited to appear; and at the hearing the court may revoke his letters as upon a petition, but cannot appoint a successor.

§ 112, Prob. C.
am'd.

§ 6366. Court may compel attendance. At any hearing contemplated by the two preceding sections the court may require and compel the attendance of the executor, administrator or guardian in person and examine him under oath respecting the alleged cause for his removal.

§ 6367. Court may enjoin and suspend powers, when. Upon issuing a citation in a proceeding for the removal of an executor, administrator or guardian or in a proceeding to require him to give new security, if he is wasting or misappropriating or alleged to be wasting or misappropriating the estate, the court may by order summarily suspend his powers or enjoin him from doing any specific act in the exercise thereof as the case requires until its final determination.

§ 88, Prob. C.
§ 2, c. 106, 1883.
am'd.

§ 6368. Final settlement of account. Discharge. An executor, administrator or guardian may at any time present to the county court a petition praying that his account may be settled and that a decree may thereupon be made revoking his letters and discharging him accordingly. The petition must set forth the facts upon which the application is founded; but the application shall not be entertained while a proceeding is pending for the removal of the executor, administrator or guardian or if in the opinion of the judge there is good cause for his removal or other sufficient cause for refusing to entertain the same.

§ 105, Prob. C.
am'd.

§ 6369. Proceedings pending discharge. If the court entertains such application, a citation must issue to all parties interested in the estate. At the hearing any creditor or other person interested may allege cause for denying the application or allege cause for his removal and pray relief accordingly. Upon a trial of the issue if the court determines that sufficient cause exists for granting the application, the petitioner must be allowed to account; and after he has fully accounted and paid over all money which is found to be due from him to the estate and delivered over all books, papers and other property of the estate in his hands as the court directs a decree shall be made discharging him and revoking his letters, otherwise such decree shall be made as justice requires.

§ 297, Prob. C.
am'd.

§ 6370. Acts valid until letters revoked or suspended. All acts of an executor or administrator capable by law of making a contract notwithstanding any cause for removal remain as valid and effectual as if he continued lawfully to execute the duties of his trust until his letters are revoked or his powers suspended by a decree or order of the court.

§ 106, Prob. C.
am'd.

§ 6371. Procedure, when one executor dies or is removed. When one of two or more executors or administrators dies or becomes incapable of discharging the trust or when letters are revoked as to one of them, a successor to such person shall not be appointed unless such appointment is necessary in order to comply with the express provisions of a will, but the others shall proceed and complete the administration of the estate pursuant to the letters.

§§ 103, 104,
Prob. C.
am'd.

CHAPTER 6.

SETTLEMENT OF THE ESTATES OF DECEDENTS.

ARTICLE 1.—COLLECTION, INVENTORY AND APPRAISEMENT OF THE ESTATE.

§§ 122, 210.
Prob. C.
am'd.

§ 6372. **Possession, powers and duties of executors and administrators.** The executor or administrator is entitled to possession of all the real and personal property of the decedent except the homestead and other exempt property reserved by law to the surviving husband or wife or children; and must protect the real property from waste or other injury and collect the rents and profits thereof until ordered to surrender the same and collect the goods, chattels and other effects of the decedent and the debts and demands of every description due to the decedent or accruing to the estate in his right, and safely keep and dispose of the same according to law.

§ 6373. **Unauthorized person having property of decedent.** Every person having or obtaining property of a decedent without authority from the executor or administrator is liable to account for the same at its full value and shall not be allowed to retain or deduct therefrom any debt due from such decedent.

§ 124, Prob. C.
am'd.

§ 6374. **Embezzlement of decedent's property.** Any person who embezzles, conceals or alienates any moneys, goods, chattels or effects of a decedent is liable in a civil action for double the value of such property or for the return of the property with damages to the extent of its value to be recovered by the executor or administrator for the benefit of the estate.

§ 123, Prob. C.
am'd.

§ 6375. **Possession of real estate, terms of.** Unless it satisfactorily appears to the county court that the rents, issues and profits of the real estate for a longer period are necessary to be received by the executor or administrator wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts at the end of ten months from the first publication of the notice to creditors, the court must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

§ 6376. **Lease of real estate.** An executor or administrator may lease the real property under his control until ordered to surrender the same and may keep in suitable repair all houses, buildings and fixtures thereon.

§ 214, Prob. C.
am'd.

§ 6377. **Inventory by surviving partner.** In case of the death of one partner the surviving partner must make a full, true and complete inventory of the property of the copartnership within his knowledge with a list of all the liabilities thereof at the time of the death of the deceased partner and deliver the same to his executor or administrator or to the county court. Such surviving partner or partners have the right to continue in possession of the effects of the partnership, pay its debts out of the same and settle its business; but must proceed thereto without delay and account with the executor or administrator and pay over such balances as may from time to time be payable to him in the right of the decedent. Upon the application of the executor or administrator the county court may whenever it

appears necessary after citation order such surviving partner to deliver an inventory or render an account and may enforce the order as in other cases.

§ 6378. Possession from third persons, how. An executor or administrator may present to the county court an affidavit setting forth facts which tend to show that money, goods, chattels, conveyances, bonds, contracts or other writings containing evidences of a right or claim of the decedent to any property or of any demand due such decedent which should be delivered to him or included in an inventory or appraisal, is in the possession or under the control of a person who withholds or refuses to account for the same or that a person has knowledge or information which he refuses to impart respecting such money, goods, chattels, conveyances, bonds, contracts or other writings so that the same cannot be discovered, inventoried or appraised, and praying that he may be required to appear and be examined concerning the same. If the court is satisfied that there are reasonable grounds for an investigation such person must be cited to appear in person. He may also be directed to appear forthwith and in that case the citation may be served at any time before the hearing.

§§ 125, 127.
Prob. C.
am'd.

§ 6379. Examination of third persons as to possession. On the attendance of the person so cited he must be sworn and examined under oath and may be compelled to answer any question that may be put to him respecting any money, goods, chattels, conveyances, contracts or other writings specified in the preceding section and make a full disclosure of all the facts within his knowledge or information in relation thereto; but his answers cannot be given in evidence against him in a criminal prosecution. If his testimony tends to show that other persons have knowledge or information that will aid the executor or administrator in the discovery of property to be inventoried or appraised, they may be subpoenaed and examined in like manner. After the examination the court may hear the testimony of other witnesses. And when it appears that a person so examined has in his possession or under his control any money, goods, chattels, conveyances, contracts or other writings belonging to the estate he may be ordered and compelled to deliver the same to the executor or administrator or to produce the same for inventory and appraisal as the case requires, unless he interposes a written answer duly verified to the effect that he is the owner of the property or is entitled to possession thereof by virtue of a special property therein or by virtue of a lien under which he obtained possession in the life time of the testator.

§ 126, Prob. C.
am'd.

ARTICLE 2.—INVENTORY AND APPRAISEMENT OF THE ESTATE.

§ 6380. Inventory of executor or administrator, contents of. Every executor or administrator must within thirty days after his appointment make and return to the county court a true inventory and appraisement of all the real and personal property of the decedent which has come to his knowledge including a list of all bonds, mortgages, notes, book accounts and other securities or evidences of debt which appear by the books or papers of the deceased to be unsettled with a statement of the sums credited thereon if any. If no money has come to the hands of the executor or administrator,

§§ 113, 116.
Prob. C.
am'd.

that fact must be stated in the inventory. The property inventoried shall be classed under separate heads as follows:

1. All the real estate with a statement showing what portion thereof if any is occupied or claimed as a homestead.

2. All the personal property money included, which is supposed to be exempt distinguishing between such as is deemed absolutely exempt and other property.

3. All other property not above specified.

§ 119, Prob. C.
am'd.

§ 6381. Inventory, how made. The inventory must be signed by the executor or administrator, who must take and subscribe thereon an oath before an officer authorized to administer oaths that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession and particularly of all money belonging to the decedent and of all just claims of the decedent against the affiant.

§ 117, Prob. C.
am'd.

§ 6382. Executor's personal debt. A person named in a will as executor is not thereby discharged from any just claim which the testator has against him but the claim must be included in the inventory and collected or accounted for in the same manner as other claims.

§ 6383. Inventory to contain partnership interest. The interest of the decedent in an unsettled partnership must be included in the inventory and appraised upon the statement rendered by the surviving partner or otherwise, like other property.

§ 118, Prob. C.
am'd.

§ 6384. Bequest to executor. A discharge or bequest in a will of a debt or demand of the testator against an executor or other person is not valid against creditors of the testator but must be treated as a specific bequest of the amount of the debt or demand. Such demand must be included in the inventory and be collected and applied so far as necessary in payment of the creditors after which the surplus if any shall be paid as other legacies.

§ 6385. Decedent's life insurance. The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society upon the death of a member of such society are not subject to the debts of the decedent except by special contract, but in other respects shall be inventoried and disposed of like other property.

§ 114, Prob. C.
am'd.

§ 6386. Appraisers to be appointed. Oath. Compensation. To make the appraisement the judge must appoint three competent and disinterested persons any two of whom may act. The appointment may be made by order at any time. A notice of the appointment must be issued upon which before entering upon their duties the appraisers must each subscribe an oath administered by a competent officer to the effect that he will truly and impartially according to the best of his ability appraise the property of the decedent and discharge all other duties required of him as such appraiser. If any portion of the property is in another county the same appraisers may serve or others may be appointed in that county. The notice and oath of the appraisers must be returned with the inventory together with a verified statement of their services and expenses. They shall be allowed a reasonable compensation for their services not exceeding the amount of their necessary expenses and two dollars a day in addition to be paid by the executor or administrator as expenses of the administration.

§ 6387. Appraisers, duties of. The appraisers must estimate and appraise at its actual value according to their best judgment all the property described in the inventory submitted by the executor or administrator except money and must set down in figures opposite each item the value thereof as agreed upon in dollars and cents and after completing the appraisement they must subscribe and annex thereto an affidavit to the effect that the value appearing opposite each item was entered by them or by their direction and is the true value agreed upon as their appraisement, and deliver the same to the executor or administrator or to the court. § 115, Prob. C. am'd.

§ 6388. Supplementary inventory, when made. Whenever property, which is not included in an inventory previously made in the same case, comes to the knowledge or possession of an executor or administrator, he must within one month thereafter or within such time as the court orders make a supplementary inventory and cause an appraisement thereof to be made and returned in like manner. § 121, Prob. C. am'd.

ARTICLE 3.—POSSESSION OF THE HOMESTEAD AND ALLOTMENT OF EXEMPT PROPERTY.

§ 6389. Homestead exempt from debt or liability. Delivery of. Upon the death of either husband or wife the survivor may continue to possess and occupy the whole homestead and upon the death of both husband and wife the children may continue to possess and occupy the same until otherwise disposed of according to law. Such homestead as defined in section 3605 of the civil code must be ascertained and set apart as hereinafter prescribed upon the selection of the person or persons entitled to possession thereof and shall not be subject to the payment of any debt or liability contracted by or existing against the husband or wife or either of them previous to or at the time of the death of such husband or wife except as provided in the law relating to homesteads. § 128, Prob. C.
§ 131, Prob. C.
§ 1, c. 108, 1881, am'd.

§ 6390. Appraisers to value homestead. The appraisers must procure from such person or persons a description of the property claimed as a homestead and appraise the same at its value at the time of the death of the testator or intestate and shall if necessary cause the boundaries thereof to be ascertained and marked in their presence by a competent surveyor. If they find that it has been selected in such form as will materially diminish the value of any remaining part of the property, they may modify its boundaries so as to avoid such injury if it can be done without material injury to the homestead property. If they find that the property selected as a homestead exceeds in value the sum of five thousand dollars, they shall in like manner set off the homestead in such form as to exclude the excess unless they further find that the property cannot be divided without material injury. They shall make a full report of all their proceedings and findings in relation to the homestead and annex the same to the inventory.

§ 6391. Exempt personal property, disposition of. There shall also be set apart absolutely to the surviving wife or husband or minor children all the personal property of the testator or intestate which would be exempt from execution, if he was living including all property absolutely exempt and other property selected by the § 135, Prob. C. am'd.

person or persons entitled thereto to the amount in value of fifteen hundred dollars according to the appraisement and such property shall not be liable for any prior debt of the decedent except the necessary charges of his last sickness and funeral and expenses of the administration when there are no other assets available for the payment of such charges.

§ 6392. Return of inventory and appraisement. Objections. Hearing. Upon the return of the inventory and appraisement the court must fix a day for hearing objections thereto concerning the homestead and other exempt property and the executor or administrator must cause notice thereof to be given to all parties interested. At the hearing the court may confirm the proceedings as to the inventory and appraisement or modify the same or set them aside and order a new appraisement as justice requires. If the court finds that the homestead exceeds in value the sum of five thousand dollars and further finds that the property cannot be divided without material injury, the order setting it apart must determine the amount of such excess and the property may thereafter be subjected to the payment of debts in the same manner as other property to the extent of the excess so determined after all the other available property has been exhausted.

§ 132, Prob. C.
am'd.

§ 6393. Allowance for the family. If the amount so set apart is insufficient for the support of the widow and children or either and there is other estate of the decedent, the court may in its discretion order such reasonable allowance out of the estate as shall be necessary for the maintenance of the family according to their circumstances during the progress of the settlement of the estate, which in case of an insolvent estate must not be longer than one year after granting letters testamentary or of administration.

§ 133, Prob. C.
am'd.

§ 6394. Allowance is a preferred claim. Any allowance made by the court in accordance with the preceding section must be paid in preference to all other charges except funeral charges or expenses of administration and any such allowance whenever made may in the discretion of the court take effect from the death of the decedent.

ARTICLE 4. — PROPERTY CHARGEABLE WITH THE PAYMENT OF DEBTS.

§ 162, Prob. C.
am'd.

§ 6395. Property of decedent chargeable with. All the property of a decedent except as otherwise provided for the homestead and personal property set apart for the surviving wife or husband and minor child or children shall be chargeable with the payment of the debts of the deceased, the expenses of administration and the allowance to the family.

§ 193, Prob. C.
am'd.

§ 6396. Provisions of the will must be followed. If the testator makes provision by his will or designates the estate to be appropriated for the payment of his debts, the expenses of administration or allowance to the family, they must be paid according to such provision or designation out of the estate thus appropriated so far as the same is sufficient.

§ 195, Prob. C.
am'd.

§ 6397. Provisions insufficient. Proceedings. If the provision made by the will or the estate appropriated therefor is insufficient to pay the debts, expenses of administration and the allowance to the family, that portion of the estate not devised or disposed of by

will if any must be appropriated and disposed of for that purpose according to the provisions of article 6 of this chapter.

§ 6398. **Property liable for debts.** The estate real and personal given by will to legatees or devisees is liable for the debts, expenses of administration and allowance to the family in proportion to the value or amount of the several devises or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator and there is other sufficient estate.

§ 196, Prob. C.
am'd.

ARTICLE 5.—OF CLAIMS AGAINST THE ESTATE.

§ 6399. **Claims. Duties of judge.** It shall be the duty of the county judge granting letters testamentary or of administration to receive, examine and adjust the claims and demands of all persons against the decedent or his estate, which may be presented to him in accordance with the provisions of this article.

§ 6400. **Notice to creditors.** At the time of issuing letters or upon the return of the inventory the court shall direct the executor or administrator to give notice of his appointment to all persons having claims against the decedent or his estate specifying the place where the same may be exhibited to him, and the time within which they must be presented to the court for adjustment and allowance. Such notice must be given by publishing the same at least four times once each week for four successive weeks in some newspaper of the county if there is one, or if not then in some convenient newspaper of the state to be designated in the order. The court may also require further notice to be given by publication or by posting.

§ 137, Prob. C.
am'd.

§ 6401. **Time of notice. Filing claims.** The time expressed in the notice must be six months after its first publication when the estate exceeds in value the sum of five thousand dollars according to the appraisement and four months when it does not.

§ 138, Prob. C.
am'd.

§ 6402. **Proof and record of notice.** A copy of the notice with due proof of publication or of publication and posting must be filed, and if the court is satisfied therefrom that due notice to creditors has been given, a finding to that effect shall be entered in the journal.

§ 139, Prob. C.
am'd.

§ 6403. **Claims presented for adjustment.** All claims of every description against a decedent or his estate for the payment of money including judgments, unliquidated demands, debts not due, claims arising out of a liability of any person as surety for the decedent and other contingent claims must be presented to the court for adjustment within the time limited in the notice prescribed by section 6401. A demand maintained in or arising out of an action commenced by or against the decedent in his lifetime and continued by or against his representative, which has not been finally adjudicated, is deemed a contingent claim for the purposes of this section. A claim may be presented after the expiration of the time herein prescribed when it is shown to the satisfaction of the court before the final distribution that the owner and holder thereof has not been negligent and was prevented from presenting the same within such time by reason of his absence from the state or other sufficient cause.

§ 140, Prob. C.
am'd.

§ 6404. **Claims, when barred.** Every person having a claim against the deceased person for the payment of money, which is not presented as prescribed in the preceding section, is forever barred

§ 140, Prob. C.
1, c. 108, 1381.
am'd.

from recovering such demand or from setting off the same in any action or special proceeding whatever, except under circumstances entitling him to equitable relief. But this section shall not be construed to prohibit or restrict a right to foreclose a mortgage or other lien upon specific property as provided by law in a civil action, or to foreclose a mortgage on real property by advertisement and sale when the county court has not obtained jurisdiction of the estate of the mortgagor.

§ 149. Prob. C. am'd. **§ 6405. Vacancy in office not included in limitation.** The time above limited does not include any period during which there is a vacancy in the office of county judge.

§ 6406. Claims, how entitled. Every claim when presented shall be entitled in the name of the claimant against the executor or administrator, if he is the claimant against the estate, and if disputed must be clearly and distinctly stated so as to enable the adverse party to demur or answer as in a civil action and issues may be joined thereon accordingly at any hearing contemplated by this article.

§ 141. Prob. C. am'd. **§ 6407. Claims, approvals, indorsement.** If a claim has not been exhibited to the executor or administrator and indorsed with his approval or disapproval before presentation, a copy thereof must be served upon him thereafter, and unless he files his approval in writing within ten days after such service he shall be deemed to have disapproved of the same. Before approving any claim the executor or administrator shall require an affidavit of verification to be attached thereto by the claimant or some person competent to make the same in his behalf to the effect that there are no payments or other offsets to be credited or allowed except such as are therein stated and that the amount claimed is justly due and owing to the claimant out of the estate of the deceased. If the claim is based on a contingent liability, the amount which the affiant believes will be due and payable must be stated with the particulars upon which his belief is founded. The executor or administrator must not approve any claim unless satisfied that the same is in all respects just.

§§ 144-151. Prob. C. am'd. **§ 6408. Claims, when allowed by court.** A claim may be allowed by order of the court upon the approval of the executor and the production of such proofs as may be required by the provisions of section 6407 or of such further proof as the court shall deem sufficient. but the court may decline to act thereon until the executor or administrator is cited as hereinafter prescribed. When an executor offers to approve a claim in part or subject to an offset, the amount so admitted may be allowed in like manner if the creditor consents thereto in writing, otherwise the entire claim shall be deemed disapproved and the claimant shall not be awarded costs upon proving the same unless he is awarded an amount greater than that so offered.

§ 146. Prob. C. am'd. **§ 6409. Claim rejected. Citation for. Hearing.** When a claim is not allowed as prescribed in the preceding section after it has been duly exhibited or served the court shall, at the request of the claimant, issue a citation to the executor as upon a petition and the claimant shall cause the same to be served accordingly. At the hearing the claim shall be deemed denied without any pleading on behalf of the estate; and any party appearing may demur or allege any legal defense to the demand. The executor or administrator may likewise allege an offset or counterclaim that might have been maintained by the decedent. Upon a trial of the issues the court shall make a decree

allowing or disallowing such claim or counterclaim, or any part of the same as justice requires; or if both are established the court shall ascertain and allow the balance in favor of the claimant or the estate as the same shall be found. If such balance is found in favor of the estate, the decree must direct payment accordingly.

§ 6410. Decree allowing claim. Every decree or order which allows a claim must classify the same according to the order in which it is entitled to payment and when a claim is established and allowed as a lien upon specific property, personal and real, must also specify the particular property covered by the lien.

§ 6411. Claim by executor or administrator. If an executor or administrator is a creditor of the decedent his claim may be allowed by the court, when presented in the same manner and upon like proof as the claim of another person by him approved or if the court declines to allow the same, the parties interested in the estate may be cited in the same manner and with like effect as in other cases. § 158, Prob. C. am'd.

§ 6412. Claim of judge against decedent, how allowed. A judge of the county court having jurisdiction of the estate may exhibit a claim to the executor or administrator, and upon his approval or disapproval thereof may present the same for allowance to the county judge of an adjoining county, who shall proceed as if he had jurisdiction of the estate and his order or decree shall be entered as that of the court in which the case is pending. § 143, Prob. C. am'd.

§ 6413. Claims upon judgment or written instrument. A claim which is founded upon the judgment or other determination of a court having jurisdiction to render the same must be allowed upon the production of a duly authenticated copy thereof and satisfactory proof of the amount remaining unsatisfied. When a claim is founded on a bond, bill or other written instrument, the original must be produced and filed with the county judge or its absence must be satisfactorily accounted for and a copy thereof produced if practicable. An instrument so filed can be withdrawn only by order of the court for good cause shown and upon the substitution of a true copy. § 145, Prob. C. am'd.

§ 6414. Claims barred cannot be allowed. No claim or counterclaim which was barred by the statute of limitations when the claim was first presented must be allowed under the provisions of this article, but after presentation no claim is affected by the statute of limitations while pending before the county court or on appeal. § 147, Prob. C. am'd.

§ 6415. Executor's settlement. Creditors notified. At the time when the executor or administrator presents his account for settlement, every creditor having claims pending in the county court which have not been disposed of as hereinbefore prescribed, must be notified of the hearing and have an opportunity to present his proofs and upon his failure to do so a final order shall be made disallowing the same. At the same time there may be a rehearing upon any claim previously allowed by order, but not afterwards.

§ 6416. Claims proved and allowed. Every claim proved and allowed as prescribed in this article must be classed among the acknowledged debts and charges to be paid in the due course of administration. § 145, Prob. C. am'd.

ARTICLE 6. — PAYMENT OF DEBTS AND CHARGES.

§ 6417. **Debts, order of payment.** The acknowledged debts and charges must be paid in the following order:

1. The necessary expenses of the administration.
2. The expenses of the last sickness and funeral.
3. Allowances made to the family in excess of the exempt property.
4. Debts having preference by the laws of the United States.
5. Debts which are liens upon specific property whether by judgment, mortgage or otherwise in the order of their priority.
6. All other demands against the estate.

§ 259, Prob. C.
am'd.

§ 6418. **Limitation as to mortgages.** The preference given in the preceding section to a mortgage or other lien only extends to the proceeds of the property subject to such lien. If the proceeds of such property are insufficient to pay the demand, the part remaining unsatisfied must be classed with other demands against the estate.

§ 202, Prob. C.
am'd.

§ 6419. **Liens on realty to be paid.** When any sale is made by an executor or administrator pursuant to the provisions of this chapter of land or other property that is subject to any mortgage or other lien, which is a valid claim against the estate of the decedent and has been presented and allowed, the purchase money must be applied after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage or lien and the residue if any in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay, and the property is subject to such mortgage or lien until the purchase money has been actually so applied. The purchase money or so much thereof as may be sufficient to pay such mortgage or lien with interest and any lawful costs and charges thereon may be paid into the county court, and thereupon the lien must cease and the purchase money must be paid over by the judge without delay in payment of the expenses of the sale and in satisfaction of the debt to secure which the mortgage or other lien was taken and the surplus, if any, must be returned to the executor or administrator.

§ 260, Prob. C.
am'd.

§ 6420. **Creditors equal within classes.** If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any class shall receive any payment until all those of the preceding class are fully paid and no preference shall be given in the payment of a debt over other debts of the same class except those specified in the fifth class.

§ 261, Prob. C.
am'd.

§ 6421. **Certain expenses, paid when.** The executor or administrator, as soon as he has sufficient funds in his hands must pay the funeral expenses and the expenses of the last sickness and the allowance made to the family of the decedent. He may pay or retain in his hands the necessary expenses of administration but he is not obliged to pay any other debt or any legacy until as prescribed in this article the payment has been ordered by the court.

§ 161, Prob. C.
am'd.

§ 6422. **Payment of taxes, pledges and liens.** If satisfied that it will be for the benefit of the estate, the county court may by order authorize or direct the executor or administrator on the application of any person interested, to pay taxes and demands maturing upon any debt secured by a mortgage, pledge or other lien existing

on the property of the decedent or upon a contract for the purchase of real property whenever there are sufficient funds properly applicable thereto although such demand has not been presented and allowed. But the provisions of this section shall not relieve the executor or administrator from responsibility for all injury or loss resulting from any misapplication of the money in his hands.

§ 6423. Decree for payment of debts. Upon the settlement of the account of an executor or administrator at the expiration of the time allowed for presenting claims if there are debts or charges remaining unpaid, the court must make such decree for the payment thereof as the circumstances of the estate require, unless it appears that there are no more assets available for that purpose. If the assets are ready for distribution to the creditors the court shall make a peremptory decree for payment after declaring a dividend if necessary. If there are other assets available which are not ready for such distribution, the executor or administrator must be directed to take the necessary steps to convert them into money for that purpose, as speedily as possible without material injury to the estate and if the estate is solvent, a partial dividend may be declared. The court must proceed in like manner at each subsequent settlement until the debts are paid.

§ 262, Prob. C.
am'd.

§ 6424. Contingent claim pending. Proceedings. At the time of such settlement, each person having a contingent claim pending which cannot be proved as a debt must be required to produce proof of the liability of the decedent by a previous notice given as prescribed in section 6415. If it appears upon such proof that there is reason to believe that the liability will become absolute, the court may order the executor or administrator to retain in his hands sufficient assets to pay the same in that event or, if the estate is insolvent, sufficient to pay a proportion equal to the dividends of other creditors or if a final distribution is made, the court may require the persons to whom the estate is distributed to give bond with sufficient sureties for the payment of such sum as may be found due by the county court in case the liability shall thereafter become absolute and upon proof of such amount the claimant may be authorized to bring an action on the bond for its recovery.

§ 263, Prob. C.
am'd.

§ 6425. Executor or administrator liable for debts ordered paid. When a decree is made for the payment of creditors, the executor or administrator becomes personally liable to each for the sum specified therein and execution may issue accordingly, or each creditor may recover the amount due him in an action on the bond of the executor or administrator upon his failure to comply with the order.

§ 264, Prob. C.
am'd.

§ 6426. Legacies and distribution of estate. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees or other persons entitled as provided in article 11 of this chapter, but if there are debts remaining unpaid, or, if for other reasons the estate is not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

§ 266, Prob. C.
am'd.

§ 6427. Liability of executor or administrator on failure to give notice to creditors. When the accounts of the administrator or executor have been settled and an order made for the payment of debts and distribution of the estate, no creditor whose claim

§ 265, Prob. C.
am'd.

was not included in the order for payment has any right to call upon the creditors, who have been paid or upon the heirs, devisees or legatees to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to creditors as required in sections 6400 and 6415 such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed.

ARTICLE 7. — SALES BY EXECUTORS AND ADMINISTRATORS.

§§ 163, 209,
Prob. C.
am'd.

§ 6428. Property of decedent may be sold, how. The property of a decedent, personal and real, which is chargeable with the payment of his debts and legacies or the expenses of the administration and the allowance to the family, may be sold as herein-after prescribed. But no executor or administrator shall directly or indirectly purchase any property of the estate which he represents or be interested in any sale. No sale by an executor or administrator is valid unless made and confirmed in pursuance of a decree of the county court, except as otherwise provided in the next two sections.

§ 6429. Perishable property to be sold, when. After the return of the inventory, the executor or administrator may from time to time sell such portion of the personal effects as are of a perishable nature, or would otherwise be likely to depreciate in value, or so much other personal property as may be necessary to pay expenses of the administration and the last sickness of the decedent; but is responsible for all property so sold until the sale is confirmed.

§ 194, Prob. C.
am'd.

§ 6430. Sale of property under will. Confirmation. When property is directed by the will to be sold or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the county court at either public or private sale, and with or without notice as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

§§ 167, 169,
Prob. C.
am'd.

§ 6431. Sales, when to be made. Personalty first sold. Whenever a sale becomes necessary for the payment of debts, legacies, allowances or expenses chargeable upon the estate, or whenever such sale will be for the benefit of the estate and the parties interested therein, the executor may from time to time, so long as any personal property remains in his hands, present an application to the county court setting forth the facts and praying for an order directing him to sell the same or so much thereof as may be deemed necessary or proper; and thereupon all parties interested in the estate must be cited as in other cases.

§ 171, Prob. C.
§ 1, c. 53, 1890,
am'd.

§ 6432. Sale of real estate. Proceedings. When a sale of real property becomes necessary for the payment of debts, expenses or allowances chargeable thereon, the executor or administrator shall petition the county court for a decree directing a sale of the same or so much thereof as may be necessary for that purpose or a sale of both personal and real property; and a citation shall issue to all parties interested accordingly.

§ 180, Prob. C.
am'd.

§ 6433. Petition for sale by third person. If an executor or administrator neglects to make application under either of the two preceding sections, any creditor whose claim has been presented or

other person interested may make the application in the same manner and with like effect as if made by the executor or administrator, and when an executor or testamentary administrator neglects to make any sale which he is required to make under the provisions of a will, any creditor or other person interested may in like manner make application, as the case requires, for a decree or order directing such sale.

§ 6434. **Petition, contents of.** Every petition for the sale of real estate must show as nearly as can be ascertained the value of the personal property remaining in the hands of the executor, the amount of expenses of the administration and allowances to the family, if any, remaining unpaid and the amount which will be required to pay the debts of the deceased and legacies, if any, given in his will; also a general description of all the real estate and the value thereof and a particular description of the part which it is proposed to sell with a statement of its condition and value.

§ 172, Prob. C.
2, c. 53, 1890.
am'd.

§ 6435. **Petition, hearing of.** At any hearing contemplated by the foregoing provisions of this article, the court may direct a sale of personal property if satisfied that such sale is necessary or for the interest of the estate and the parties entitled thereto. At a hearing upon an application for the sale of real property, the court must inquire fully into the condition of the estate and direct a sale of only so much thereof as shall appear to be necessary; but if the parties consent that real estate may be sold in preference to personal property, the decree may direct a sale accordingly.

§§ 164, 173.
176, 178, 256.
Prob. C.
§ 3, c. 53, 1890.
am'd.

§ 6436. **Sale of all the real estate may be authorized, when.** If it appears necessary to sell a part of the real estate and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable or that after such sale the residue would be so small in quantity or value, or would be of such character with reference to its future disposition among the heirs or devisees as clearly to render it for the interest of all concerned that the same should be sold, the court may authorize the sale of the whole estate or of any part thereof necessary and for the interest of all concerned.

§ 177, Prob. C.
am'd.

§ 6437. **One sale, when.** When the petition alleges that the estate is insolvent or that it will require a sale of all the property to pay the debts, allowances and expenses with which it is chargeable with such further particulars as are required in a petition for the sale of real property, and it appears to the satisfaction of the court after full inquiry into the facts and circumstances, that the property is no more than sufficient to pay the same, the decree may direct the sale of all the property chargeable with such payment and there need be no further order of sale thereafter.

§ 165, Prob. C.
am'd.

§ 6438. **No sale to be directed, when. Bond.** A sale of real estate shall not be directed if any of the persons interested in the estate give bond to the state of North Dakota for the use and benefit of all persons having claims against the estate, in a sum and with sureties approved by the court and with condition to pay, so far as the personal estate of the deceased shall be insufficient therefor, all legacies, debts and charges that shall eventually be found due from the estate.

§ 6439. **Sale directed, stopped, how.** After a sale is directed any person interested in the estate may prevent a sale of the whole or any part of the property designated in the decree or order by giving

bond, in like manner, with a condition to pay all demands that shall be found due from the estate, to the extent of the value of the property thus kept from sale as soon as called upon by the court for that purpose.

§ 6440. Order to resort to security. If it becomes necessary to resort to such security, the executor or administrator shall apply to the court for an order determining the amount of the liability so incurred and directing payment accordingly, and after obtaining such order the executor or administrator must proceed to collect such amount by an action upon the bond if necessary and apply the proceeds as the court shall direct.

§ 179, Prob. C.
am'd.

§ 6441. Decree for sale of real estate, contents of. Terms of sale. A decree for the sale of real estate must describe the lands to be sold and direct the terms of sale, which may be for cash or for one-third cash and the remainder on a credit not exceeding two years with such interest as the court shall deem proper, secured by a mortgage on the property and may direct that the sale be made in one parcel or in such subdivisions as may be deemed most convenient. If a decree directs the sale of devised property which is not charged by the will with the payment of debts or legacies, such property must not be sold until the other property is exhausted.

§ 6442. Private sale, when. The court may direct that any property, real or personal, be sold at private sale, if satisfied that the interest of the estate will be thereby promoted; otherwise every sale must be made at public auction after giving the same notice of the time and place of sale, as would be necessary for the sale of such property on execution.

§§ 170, 179, 181,
Prob. C.
am'd.

§ 6443. Notice of place of private sale to be given. If a private sale is authorized the court may direct the executor or administrator to publish a notice of the place where such sale will be made and the time when the same will commence.

§ 168, Prob. C.
am'd.

§ 6444. Partnership interests and claims may be sold. Partnership interests, interests in personal property pledged and choses in action may be sold in the same manner as other personal property, when it appears to be for the interest of the estate, but before ordering a sale of any partnership interest the court must inquire into the condition of the partnership affairs and examine the surviving partner if in the county and able to be present.

§ 203, Prob. C.
am'd.

§ 6445. Lien on the property purchased. When the holder of any mortgage or other lien, whose claim has been presented and allowed, purchases any property which is subject to the lien at a sale made by an executor or administrator, his receipt for the amount, which he would be entitled to receive by virtue of the lien from the proceeds after deducting expenses of the sale, shall be accepted as a payment of so much money.

§ 184, Prob. C.
am'd.

§ 6446. Limit of price. Reappraisement. No property can be sold at private sale for less than ninety per cent of the appraised value thereof. No real estate can be sold at private sale unless it has been appraised within one year. If it has not been so appraised or if the court deems the reappraisement too high or too low, a new reappraisement must be made before the sale is confirmed.

§ 182, Prob. C.
am'd.

§ 6447. Hour of real estate sale. A sale of real estate at public auction must be made between the hours of nine in the morning and four in the afternoon of the day specified in the notice of sale unless the same is postponed.

§ 6448. **Postponement of the sale.** If at the time appointed for the sale the executor or administrator deems it for the interest of the persons concerned therein that the same be postponed, he may postpone it from time to time not exceeding in all three months. § 191, Prob. C. am'd.

§ 6449. **Notice of postponement, how given.** In case of a postponement, notice thereof must be given by a public declaration at the time and place first appointed for the sale, and if the postponement is for more than one day, further notice must be given by posting notices in three or more public places in the county where the land is situated or by publishing the same, or both, as the time and circumstances will admit. § 192, Prob. C. am'd.

§ 6450. **Security for deferred payments.** When real property is sold at public auction, the purchaser must immediately deposit with the executor or administrator the money agreed upon as a cash payment and execute and deliver to him a note and mortgage on the property to secure each deferred payment, and upon his failure to do so the property shall be again offered for sale. When sold at private sale the money and securities must be deposited or delivered in like manner before the sale is reported for confirmation. § 185, Prob. C. am'd.

§ 6451. **Sale of personal property. Report to the court.** When an executor or administrator has made any sales of personal property, he must return to the court at his next settlement or sooner if the court so directs, a full report of such sales, with a detailed account of all moneys received therefrom, to be acted upon in the settlement of his accounts. § 208, Prob. C. am'd.

§ 6452. **Sale of real estate, report of. Hearing. Notice.** Immediately after making a sale of real estate, the executor or administrator must return to the county court a full report of his proceedings containing a statement of the money deposited for the purchase of the property and accompanied by each note and mortgage likewise deposited as security for any deferred payment, also a copy of the notice of sale and proof of publication. The court shall thereupon fix a day for hearing objections to the confirmation of such sale, and direct notice thereof to be given to each party whose post office address is known and each creditor who has a claim pending, specifying in the notice each parcel sold and the sum offered for the same and referring to the return for further particulars. §§ 186, 190, Prob. C. am'd.

§ 6453. **Hearing for confirmation of sale. Resale, when.** At the hearing pursuant to such notice, any person interested in the estate may file written objections to the confirmation of the sale and witnesses may be examined in support of the same or in opposition thereto, as upon the trial of an issue of fact. If the court is satisfied after hearing the testimony and inquiring into the facts that the sale was legally and fairly made, and that the sum offered is not disproportionate to the value of the property and there is no good reason to suppose that a greater sum can be realized upon another sale, an order must be made confirming the sale and directing a conveyance to be executed accordingly; otherwise an order shall be made setting aside the sale and directing the return of all money and securities on deposit, after which the executor may proceed anew to make sale of the property. §§ 187, 188, Prob. C. am'd.

§ 6454. **Conveyance and record upon confirmation, effect of.** When a sale of real estate is confirmed the executor or administrator must execute to each purchaser a conveyance, referring to the decree authorizing the sale and the order of confirmation. Such

conveyance is presumptive evidence of the regularity and validity of the sale and from the date of sale conveys all right, title and interest of the decedent in the property described therein, whether vested in him at the time of his death or thereafter acquired in the right of the decedent prior to its execution.

§ 198, Prob. C.
am'd. **§ 6455. Contract for purchase of land, may be sold.** If a decedent at the time of his death was possessed of a contract for the purchase of land, his interest in such land and under such contract may be sold on the application of his executor or administrator in the same manner as if he had died seized of such land and the same proceedings may be had for that purpose as are prescribed in this chapter for the sale of lands of which he died seized, except as hereinafter provided.

§ 199, Prob. C.
am'd. **§ 6456. Terms and conditions of such a sale.** The sale must be made subject to all payments that may hereinafter become due on such contract and if there are any such, the sale must not be confirmed by the court until the purchasers execute a bond to the executor or administrator for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for in double the whole amount of payments thereafter to become due on such contract, with such sureties as the county judge shall approve.

§ 200, Prob. C.
am'd. **§ 6457. Bond in such sale. Conditions of.** The bond must be conditioned that the purchaser will make all payments for such land that become due after the date of the sale, and will fully indemnify the executor or administrator, and the persons so entitled against all demands, costs, charges and expenses by reason of any covenant or agreement contained in such contract.

§ 201, Prob. C.
am'd. **§ 6458. Assignment of the contract, when.** Upon the confirmation of the sale, the executor or administrator must execute to the purchaser an assignment of the contract, which vests in the purchaser, his heirs and assigns, all the right, title and interest of the estate or of the persons entitled to the interest of the decedent in the lands sold at the time of the sale, and the purchaser has the same rights and remedies against the vendor of such land as the decedent would have had if he was living.

§ 1, c. 54, 1890.
am'd. **§ 6459. Mortgage of minor's real estate.** When it is shown to the satisfaction of the court at the hearing upon an application for the sale of real estate or upon a petition praying that the same may be mortgaged as provided in the next section after all the parties interested have been duly cited, that it will be for the benefit of the estate, the county court may direct an executor or administrator to mortgage any real estate of the decedent for the purpose of paying an existing lien or mortgage on the property or for any other purpose for which a sale may be ordered or it may authorize him to make a renewal of an existing mortgage, but the homestead shall not be mortgaged without the consent of the persons entitled thereto.

§ 2, c. 54, 1890.
am'd. **§ 6460. Petition for mortgage, contents of.** A petition for the purpose specified in the preceding section must specify the amount of money necessary to be raised and the purposes for which the same is required with such further particulars as are required in a petition for the sale of real property. The decree must fix the amount for which the mortgage may be given and the rate of interest that may be paid thereon, and may order the whole or any part of the

money so secured to be paid from time to time out of the income of the mortgaged property. The mortgage or other contract executed by the executor in pursuance thereof may be approved upon his report in the same manner as a sale.

ARTICLE 8. — SPECIFIC PERFORMANCE.

§ 6461. **Legal representative to convey real estate of decedent.** When a person who is bound by contract in writing to convey any real estate dies before making the conveyance, the county court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto in all cases when the decedent if living, might be compelled to make such conveyance. § 221, Prob. C. am'd.

§ 6462. **Petition for such conveyance, contents of.** On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated all persons interested in the estate must be cited as in other cases. § 222, Prob. C. am'd.

§ 6463. **Decree upon hearing had.** If after a full hearing and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree must be made authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner and such conveyance must be executed accordingly. § 224, Prob. C. am'd.

§ 6464. **Effect of such conveyance.** Every conveyance made in pursuance of a decree of the court as provided in this chapter and approved by the judge shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance. § 227, Prob. C. am'd.

§ 6465. **Dismissal and appeal.** If upon the hearing in the county court, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may thereafter proceed in the district court to enforce a specific performance thereof. § 226, Prob. C. am'd.

ARTICLE 9. — ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

§ 6466. **Action for possession of real estate maintained, by whom.** The heirs or devisees may themselves or jointly with the executor or administrator maintain an action for the possession of the real estate or for the purpose of quieting title to the same against any one except the executor or administrator. For the purpose of bringing suits to quiet title or for partition of such estate the possession of the executor or administrator is the possession of the heirs or devisees. Such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator for the purposes of administration as provided in this code. § 210, Prob. C. am'd.

§ 6467. **Actions by and against executors and administrators.** Except as otherwise prescribed in the next section, actions § 211, Prob. C. am'd.

for the recovery of any property real or personal, or for the possession thereof and all actions founded upon contracts may be maintained by and against executors and administrators in all cases and in the same courts in which the same might have been maintained by or against their respective testators or intestates.

§ 6468. Action for the recovery of money. No action for the recovery of money only shall be brought in any of the courts of this state against any executor, administrator or guardian upon any claim or demand which may be presented to the county court except as provided in this chapter.

§ 212, Prob. C.

§ 6469. Actions for waste, trespass and conversion. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken, carried away or converted to his own use the goods of their testator or intestate in his life time. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

§ 6470. Executor or administrator may maintain necessary action. An executor or administrator may under the direction of the county court maintain any action which may be necessary to enforce his right to the possession of the property and effects of the decedent, collect all demands due the estate and secure an accounting or settlement of any partnership existing between the decedent at or prior to his death and any other person. He may also prosecute to final judgment any action commenced by the decedent, or by a special administrator, or other administrator previously appointed in the same case.

§ 215, Prob. C.
am'd.

§ 6471. Action against predecessor. An executor or administrator may, in his own name for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

§ 80, Prob. C.

§ 6472. Successive recoveries on the bond. The bond shall not be void upon the first recovery but may be sued and recovered upon from time to time by any person aggrieved in his own name until the whole penalty is exhausted.

§ 205, Prob. C.

§ 6473. Fraudulent sale. Liability of executor. Any executor or administrator who fraudulently sells any real estate of a decedent, contrary to or otherwise than under the provisions of this chapter, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

§ 6474. Order required before action on bond. Before an action can be maintained on the bond of an executor whose letters have not been revoked, the party aggrieved must first obtain an order of the county court, authorizing him to bring the action, and before authority is given to bring an action upon the bond of a deceased executor or administrator whose account is unsettled, his sureties must be cited and have an opportunity to apply for and obtain a settlement of such account.

§ 150, Prob. C.
am'd.

§ 6475. Action pending at death of decedent. If an action pending against the decedent at the time of his death is prosecuted to judgment against his representatives or successors in interest, the judgment does not become a lien but is payable in the course of administration.

§ 6476. Judgments before death, how collected. When any judgment has been rendered for or against the testator or intestate in his lifetime or against his representative or successor in interest, no execution shall issue thereon after his death, except: § 153, Prob. C. am'd.

1. In case of the death of the judgment creditor, upon the application of his executor or administrator or successor in interest.

2. In case of the death of the judgment debtor, if the judgment is for the recovery of real or personal property or the enforcement of a lien thereon. If the execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof and the officer making the sale must account to the executor or administrator for any surplus in his hands.

§ 6477. Death after verdict. Judgment not a lien. A judgment rendered against a decedent, dying after verdict or decision on an issue of fact but before judgment is rendered thereon, is not a lien on the real property of the decedent but is payable in due course of administration. § 154, Prob. C.

§ 6478. Actions to recover real estate or set aside decree, when begun. No action for the recovery of any estate, sold by an executor or administrator or otherwise disposed of under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent unless it is commenced within three years next after the sale. An action to set aside a decree directing or confirming a sale or otherwise disposing of such property may be instituted and maintained at any time within three years from the discovery of the fraud or other ground upon which the action is based. § 206, Prob. C. am'd.

§ 6479. Minors may begin such action, when. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues; but all such persons may commence an action at any time within three years after the removal of the disability. § 207, Prob. C. am'd.

§ 6480. Recovery of fraudulent conveyances. When there is a deficiency of assets in the hands of an executor or administrator and when the decedent in his lifetime has conveyed any real estate or any rights or interests therein, with intent to defraud his creditors or to avoid any right, debt or duty of any person or has so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also for the benefit of the creditors sue and recover all goods, chattels, rights or credits which have been so conveyed by the decedent in his lifetime whatever may have been the manner of such fraudulent conveyance. § 218, Prob. C. am'd.

§ 6481. Creditors to require action to recover. No executor or administrator is bound to sue for such estate as mentioned in the preceding section for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit or give such security therefor to the executor or administrator as the judge shall direct. § 219, Prob. C.

§ 6482. Sale of such real estate after recovery. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the county court, and the proceeds of all goods, § 220, Prob. C.

chattels, rights and credits so recovered must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator.

- § 217, Prob. C. **§ 6483. Compounding debts.** Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator with the approbation of the county judge may compound with him and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just and for the interest of the estate.

ARTICLE 10. — LIABILITY AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

- § 232, Prob. C. **§ 6484. Executor or administrator not liable for debts of decedent. Exception.** No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose or some memorandum or note thereof is in writing and signed by such executor or administrator or by some other person by him thereunto specially authorized.

- § 233, Prob. C. **§ 6485. Executor or administrator chargeable with whole estate.** Every executor and administrator is chargeable in his account with the whole of the estate of the decedent, which may come into his possession, at the value of the appraisement contained in the inventory except as provided in the following sections, and with all the interest, profit and income of such estate.

- § 234, Prob. C. **§ 6486. Make neither profit or loss.** He shall not make profit by the increase nor suffer loss by the decrease or destruction without his fault of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement and if any part is sold for less than the appraisement, he is not responsible for the loss if the sale has been justly made.

- § 235, Prob. C. **§ 6487. Uncollected debts, not chargeable with.** No executor or administrator is accountable for any debts due to the decedent if it appears that they remain uncollected without his fault.

- § 237, Prob. C. **§ 6488. Not to purchase claims against estate.** No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid.

§ 6489. Liable for money received before administration. An executor or administrator is liable on his bond for money or other personal property of the estate which was in his hands or under his control when his letters were issued in whatever capacity it was received by him or came under his control.

- § 157, Prob. C. **§ 6490. Costs, when liable for.** When a judgment is recovered with costs against an executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

- § 236, Prob. C. **§ 6491. Expenses and necessary fees allowed.** He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as are provided in

this chapter; but when the decedent by his will makes some other provision for the compensation of his executor, that shall be full compensation for his services unless by a written instrument filed in the county court, he renounces all claims for compensation provided by the will.

§ 6492. Fees and commissions. When no compensation is provided by the will or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him excluding all property not ranked as assets, as follows: For the first thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of four per cent; for all above that sum, at the rate of two and one-half per cent; and the same commissions must be allowed administrators. In all cases such further allowance may be made as the county court may deem just and reasonable for any extraordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section. § 28, Prob. C.

ARTICLE 11. — ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS.

§ 6493. Full statement of accounts must be rendered. At any time when required by the court either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render for the information of the court an exhibit under oath showing the amount of money received and expended by him and all other matters necessary to show the condition of its affairs. § 239, Prob. C.
am'd.

§ 6494. Creditor may require statement. Any creditor or other person interested in the estate may apply for an intermediate account by motion upon facts showing that it is necessary or proper that such exhibit should be made and if the judge deems the application sufficient the executor or administrator must be cited accordingly. §§ 241, 242.
Prob. C.
am'd.

§ 6495. Statement may be contested. When such exhibit is rendered by an executor or administrator, any person interested may appear and by objections in writing contest any account or statement therein contained, and the court may examine the executor or administrator under oath and compel him to account fully in relation thereto. § 243, Prob. C.
am'd.

§ 6496. Time for final settlement. Every executor or administrator must render a full account and report of his administration and petition the court for a settlement thereof within sixty days after expiration of the time specified in the notice to creditors, or whenever his authority ceases, and thereupon all parties interested must be cited to appear at the time fixed for such settlement. §§ 245, 250, 251.
Prob. C.
am'd.

§ 6497. Final account and settlement. At the time designated in the last section, if within that time all the property of the estate has been sold or there are sufficient funds in his hands for the payment of all debts due by the estate and the estate is in a proper condition to be closed, the executor or administrator must render a final account and pray a settlement of his administration. § 267, Prob. C.
am'd.

§ 6498. Failure to settle. Proceedings. If the executor or administrator neglects to render such account or to petition the court for a settlement thereof as above prescribed, any creditor or other § 246, Prob. C.
am'd.

person interested may present a petition praying that an account may be taken, and that the account may be settled and determined and thereupon the executor or administrator and all other persons interested may be cited to appear in like manner and with the same effect as upon the petition of the executor or administrator. When the authority of an executor or administrator ceases or is revoked for any reason, the citation may be issued upon the petition of the succeeding administrator.

§ 6499. Hearing on settlement. Objections. At the hearing any person interested in the account may by his answer present objections to the account or any portion thereof and may pray for a further accounting or such other relief as the circumstances may justify, and the court shall determine the issues and confirm the report or require a further accounting and otherwise make such decree as the circumstances of the case require.

§ 253, Prob. C.

§ 6500. Heirs may contest all matters on settlement. All matters including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown. The hearing may be postponed from time to time and the court may appoint one or more referees to examine the accounts and make report thereon subject to confirmation and may allow a reasonable compensation to the referees to be paid out of the estate of the decedent.

§ 248, Prob. C.

§ 6501. Vouchers for all claims to be filed. In rendering his account, the executor or administrator must produce and file vouchers for all charges, debts, claims and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments and also touching any property and effects of the decedent and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

§ 249, Prob. C.

§ 6502. Settlement of items without vouchers. On the settlement of his account he may be allowed any item of expenditure not exceeding fifteen dollars, for which no voucher is produced, if such item is supported by his own uncontradicted oath reduced to writing and certified by the judge, positive to the fact of payment, specifying when, where and to whom it was made.

§ 266, Prob. C.

§ 6503. Legacies paid and estate distributed. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees or other persons entitled as provided in the next chapter; but if there are debts remaining unpaid, or if, for other reasons, the estate is not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

ARTICLE 12.—PARTIAL DISTRIBUTION BEFORE FINAL SETTLEMENT.

§ 269, Prob. C.

§ 6504. Petition for legacy or share. At any time after the lapse of the time limited for filing claims, any heir, devisee or legatee may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bond for the payment of his proportion of the debts of the estate.

§ 6505. **Notice to parties interested.** All parties interested in the estate must be cited as in other cases. § 270. Prob. C. am'd.

§ 6506. **Petition, who may resist.** The executor or administrator, or any creditor or other person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee or legatee may make a similar application for himself. § 271. Prob. C.

§ 6507. **Petition, may be allowed when.** If at the hearing it appears that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring: § 272. Prob. C.

1. Each heir, legatee or devisee obtaining such order before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond in such sum as shall be designated by the county judge with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment whenever required of his proportion of the debts due from the estate not exceeding the value or amount of the legacy or portion of the estate to which he is entitled.

2. The executor or administrator to deliver to the heir, legatee or devisee the whole portion of the estate to which he may be entitled, or only a part thereof designating it. If in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed, the costs of these proceedings to be paid by the applicant, or if there is more than one to be apportioned equally among them.

§ 6508. **Assessment against legatee or devisee.** When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must apply to the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing the court if satisfied of the necessity of such payment must make an order designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond. § 273. Prob. C.

ARTICLE 13.—DISTRIBUTION OF THE ESTATE UPON FINAL SETTLEMENT.

§ 6509. **Court distributes estate. Deceased heir.** Upon the final settlement of the accounts of the executor or administrator or at any subsequent time, upon the petition of the executor or administrator, or of any heir, legatee or devisee, the court must proceed to distribute the residue of the estate in the hands of the executor or administrator among the persons who by law are entitled thereto; and if the decedent has left a surviving child and the issue of other children, and any of them before the close of administration have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate, which such deceased child was entitled to by inheritance, must without administration be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator since the rendition of his final accounts must be reported and § 274. Prob. C.

filed at the time of making such distribution and a settlement thereof together with an estimate of the expenses of closing the estate must be made by the court and included in the order or decree; or the court or judge may order notice of the settlement of such supplementary account and refer the same as in other cases of the settlement of accounts.

§ 6510. Petition for distribution may be controverted. Any respondent may by his answer controvert the allegations of the petition and claim any share or interest to which he believes himself entitled to receive and pray for partition. The issues so joined shall be tried and determined by the court as in other cases.

§ 278, Prob. C. **§ 6511. Taxes paid before decree.** Before any decree or distribution of an estate is made, the county court must be satisfied by the oath of the executor or administrator, or otherwise, that all state, county, school and municipal taxes legally levied upon personal property of the estate have been fully paid.

§ 275, Prob. C. am'd. **§ 6512. Decree of distribution, to show what.** In the decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for and recover their respective shares from the executor or administrator or any person having the same in possession. Or the court may order a partition and after such further proceedings as may be necessary under the following sections shall make a further decree assigning to each party his separate share and confirming the distribution accordingly.

§ 260, Prob. C. am'd. **§ 6513. Advancements made. Final decree binding on all.** All questions as to advancements made or alleged to have been made by the decedent to his heirs may be heard and determined by the county court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the court or in case of an appeal, of the district court or supreme court, is binding on all parties interested in the estate.

§ 289, Prob. C. **§ 6514. Residue of estate assigned. Partition not required.** When the county court makes a decree assigning the residue of any estate to two or more persons entitled to the same, it is not necessary to make partition or distribution thereof, unless the parties to whom the assignment is decreed or some of them request that such partition be made.

§ 282, Prob. C. **§ 6515. Partition may be made.** Partition or distribution of the real estate may be made as provided in this chapter although some of the original heirs, legatees or devisees may have conveyed their share to other persons, and such shares must be assigned to the persons holding the same in the same manner as they otherwise would have been to such heirs, legatees or devisees.

§ 283, Prob. C. **§ 6516. Shares set apart, how.** When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right by metes and bounds or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

ARTICLE 14. — PROCEEDINGS FOR PARTITION.

§ 279, Prob. C. am'd. **§ 6517. Partition made by three commissioners.** To make the partition the court must appoint three commissioners, who must

be disinterested persons and must be sworn to the faithful discharge of their duties and shall receive the same compensation as appraisers. A certified copy of their appointment and of the order or decree assigning and distributing the estate must be issued to them as their warrant and their oaths must be indorsed thereon. Upon consent of the parties or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority, and is governed by the same rules as if three were appointed.

§ 6518. Real estate in different counties, division when. § 281, Prob. C.

If the real estate is in different counties, the county court may if deemed proper appoint commissioners for all, or different commissioners for each county. The whole estate whether in one or more counties shall be divided among the heirs, devisees or legatees as if it was all in one county, and the commissioners must, unless otherwise directed by the court, make division of such real estate wherever situated within this state.

§ 6519. Notice to all parties before partition. Before any partition is made or any estate is divided as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys and take such other steps as may be necessary to enable them to form a judgment upon the matters before them. § 287, Prob. C.

§ 6520. Court may assign the whole estate, when. Conditions. When the real estate cannot be divided without prejudice or inconvenience to the owners, the county court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the female, and among children preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof or secure the same to their satisfaction; or in case of the minority of such party, then to the satisfaction of his guardian, and the true value of the estate must be ascertained and reported by the commissioners. When the commissioners appointed to make partition are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court and recommend that the whole be assigned as herein provided and must find and report the true value of such real estate. On filing the report of the commissioners and on making or securing the payment as before provided, the court if it appears just and proper, must confirm the report and thereupon the assignment is complete and the title to the whole of such real estate vests in the person to whom the same is so assigned. § 284, Prob. C.

§ 6521. Whole to one person. Others to be paid. When any tract of land or tenement is of greater value than any one's share in the estate to be divided and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sum as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be confirmed by the court until the sums awarded are paid to the parties entitled to the same or secured to their satisfaction. § 285, Prob. C.

§ 288, Prob. C.

§ 6522. Report by commissioners. The commissioners must report their proceedings and the partition agreed upon by them to the county court in writing, and the court may for sufficient reasons set aside the report and commit the same to the same commissioners or appoint others.

§ 286, Prob. C.

§ 6523. Sale of whole estate. When it appears to the court from the commissioners' report, that it cannot be otherwise fairly divided and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commission appointed for that purpose and the proceeds distributed. The sale must be conducted, reported and confirmed in the same manner and under the same requirements, as provided in article 6 of this chapter.

ARTICLE 15. — DISTRIBUTION OF ESTATES OF DECEASED NON-RESIDENTS.

§ 276, Prob. C.

§ 6524. Delivery to executor of foreign will. Upon application for distribution after final settlement of the accounts of administration, if the decedent was a nonresident of the state, leaving a will which has been duly proved or allowed in the state, territory or district of his residence, and an authenticated copy thereof has been admitted to probate in this state, and it is necessary in order that the estate or any part thereof may be distributed according to the will, that the estate in this state should be delivered to the executor or administrator in the state or place of his residence, the court may order such delivery to be made and if necessary order a sale of the real estate and a like delivery of the proceeds. The delivery in accordance with the order of the court is a full discharge of the executor or administrator with the will annexed in this state in relation to all property embraced in such order. Sales of real estate ordered by virtue of this section must be made in the same manner as other sales of real estate of decedents by order of the county court.

§ 6525. Testamentary disposition regulated by law. The validity and effect of a testamentary disposition of real property situated within the state, or of an interest in real property so situated, which would descend to an heir of an intestate and the manner in which such property or such an interest descends, when it is not disposed of by will, are regulated by the laws of this state without regard to the residence of the decedent. Except when special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state and the ownership and disposition of such property, when it is not disposed of by will, are regulated by the laws of the state or country of which the decedent was a resident at the time of his death.

§ 6526. Residue of personal estate, how disposed of. Upon the settlement of such estate and after the payment of all debts for which the same is liable in this state, the residue of the personal estate may be distributed and disposed of in manner aforesaid by the county court; or in the discretion of the court, it may be transmitted to the executor or administrator, if any, in the state or country where the deceased had his domicile, to be there disposed of according to the laws thereof.

§ 6527. Estate insolvent, creditors to share equally. If such person dies insolvent, his estate found in this state shall, as far as

practicable, be so disposed of that all his creditors here and elsewhere may receive each an equal share in proportion to their respective debts.

§ 6528. Creditors to be paid before transmission to foreign executor. To this end his estate shall not be transmitted to the foreign executor or administrator until all the creditors who are citizens of this state have received their just proportions; and no creditor who is not a citizen of this state shall be paid out of the assets found here until all those who are citizens have received their just proportions as provided in the preceding section.

§ 6529. Residue may be transmitted, when. If there is any residue after such payment to the citizens of this state, it may be paid to any other creditors who have duly proved their debts here, in proportion to the amount due to each of them, but no one shall receive more than would be due to him if the whole estate was divided ratably among all the creditors as before provided. The balance may be transmitted to the foreign executor or administrator, or if there is none, it shall after the expiration of one year from the appointment of the administrator be distributed ratably among all creditors both citizens and others, who have proved their debts in this state.

ARTICLE 16.—DISPOSITION OF UNCLAIMED SHARES.

§ 6530. Agent to take care of property for nonresidents. § 291, Prob. C.
When any estate is assigned or distributed by a decree of the court to any person residing out of and having no agent in this state and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose and authorize him to take charge of such estate as well as to act for such absent person in the distribution.

§ 6531. Agent to give bond. The agent must first give a bond § 292, Prob. C.
to be approved by the county judge, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

§ 6532. Sale of property, when unclaimed for a year. § 293, Prob. C.
When personal property remains in the hands of the agent unclaimed for a year and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court and the proceeds after deducting the expenses of the sale allowed by the court, must be paid into the state treasury. When the payment is made, the agent must take from the treasurer duplicate receipts, one of which he must file in the office of the state auditor and the other in the county court.

§ 6533. Agent to render an annual account. The agent § 294, Prob. C.
must render to the county court appointing him, annually, an account showing:

1. The value and character of the property received by him, what portion thereof is still on hand, what sold and for what.
2. The income derived therefrom.
3. The taxes and assessments imposed thereon, for what, and whether paid or unpaid.

4. Expenses incurred in the care, protection and management thereof, and whether paid or unpaid. When filed, the county court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may by order direct a sale to be made of the whole of such parts of the real or personal property as shall appear to be proper and the purchase money to be deposited in the state treasury to be receipted for and the receipts filed as in like cases before provided.

§ 295, Prob. C. **§ 6534. Liability of agent on bond.** The agent is liable on his bond for the care and preservation of the estate while in his hands and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

§ 296, Prob. C. **§ 6535. Claimant for property.** When any person appears and claims the money paid into the treasury, the county court making the distribution must inquire into such claim, and being first satisfied of his right thereto, must grant him a certificate to that effect under its seal; and upon the presentation of the certificate to him, the state auditor must draw a warrant on the treasurer for the amount.

§ 298, Prob. C. **§ 6536. Property discovered after final settlement.** The final settlement of an estate as hereinbefore provided, shall not prevent a subsequent issue of letters testamentary or of administration or of administration with the will annexed if other property of the estate is discovered, or if it becomes necessary or proper for any cause that letters should be again issued.

CHAPTER 7.

OF GUARDIAN AND WARD.

ARTICLE 1.—GUARDIANS OF MINORS.

§ 333, Prob. C. **§ 6537. Guardians of persons and estates.** The county court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates or either or both of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the state and have estate within the county. Such appointment may be made on the petition of a relative or other person in behalf of such minor after the person having the custody of such minor, and such of his relatives as the court shall deem proper, have been cited to appear.

§ 334, Prob. C. **§ 6538. Minor may nominate, when.** If the minor is under the age of fourteen years, the judge may nominate and appoint his guardian. If he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the judge, must be appointed accordingly.

§ 6539. Judge may appoint, when. If the guardian nominated by the minor is not approved by the judge, or if the minor resides out of the state, or if, after being duly cited by the judge, he neglects for ten days to nominate a suitable person, the judge may nominate and appoint the guardian in the same manner as if the minor was under the age of fourteen years. § 335, Prob. C.

§ 6540. Minor may appoint, when. When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he has attained that age, may appoint his own guardian subject to the approval of the judge. § 336, Prob. C.

§ 6541. Father or mother entitled to guardianship. The father of a minor if living, and in case of his decease, the mother while she remains unmarried, being themselves respectively competent to transact their own business and not otherwise unsuitable, are entitled to the guardianship of the minor. § 337, Prob. C.

§ 6542. Guardian has custody of minor. If the minor has no father or mother living competent to have the custody and care of his education the guardian appointed shall have the same. § 338, Prob. C.

§ 6543. Guardian retains custody until majority. Every guardian so appointed shall have the custody and care of the education of the minor and the care and management of his estate until such minor arrives at the age of majority, or marries, or until the guardian is legally discharged. § 339, Prob. C.

§ 6544. Guardian to give bond. Before the order appointing any person guardian under this chapter takes effect and before letters issue, the judge must require such person to give bond with sufficient sureties, and otherwise qualify as prescribed in chapter 5 of this code. § 340, Prob. C.

§ 6545. Conditions inserted as to care, treatment and education. When any person is appointed guardian of a minor, the county judge may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education and welfare of the minor. The performance of such conditions is a part of the duties of the guardian for the faithful performance of which he and the sureties on his bond are responsible. § 341, Prob. C.

§ 6546. Extra expenses of minor, how paid. If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property in whole or in part, as judged reasonable, and must be directed by the county court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian. § 343, Prob. C.

§ 6547. Testamentary guardians, duties of. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties with regard to the person and estate of his ward, as guardians appointed by the county court, except so far as their powers and duties are legally modified, enlarged or changed by the will by which such guardian was appointed. § 344, Prob. C.

§ 6548. Guardian ad litem. Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to § 345, Prob. C.

defend the interests of any minor interested in any suit or matter pending therein.

ARTICLE 2. — GUARDIANS OF INSANE AND INCOMPETENT PERSONS.

- § 346, Prob. C. **§ 6549. Petition for guardian for insane.** When it is represented to the county court upon verified petition of any relative or friend, that any person is of unsound mind or from any cause mentally incompetent to manage his property, the judge must cause such person to be cited as in other cases, except that the time of service may be the same as upon a motion.
- § 347, Prob. C. **§ 6550. Guardian appointed, when.** If after a full hearing and examination upon such petition, it appears to the court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate with the powers and duties in this chapter specified.
- § 348, Prob. C. **§ 6551. Powers of guardian and bond.** Every guardian appointed as provided in the preceding section has the care and custody of the person of his ward and the management of all his estate until such guardian is legally discharged; and he must give bond in like manner and with like conditions as before prescribed with respect to the guardian of a minor.
- § 349, Prob. C. **§ 6552. Proceedings to declare restoration of insane.** Any person who has been declared to be of unsound mind or the guardian of any relative of such person within the third degree, or any friend may apply by petition to the county court of the county, in which he was so declared, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane. Upon receiving the petition the judge must appoint a day for the hearing and cause a citation to be issued to the guardian of the petitioner, if there is a guardian and to his or her husband or wife, if there is one, and to his or her father or mother if living in the county. On the trial the guardian or relative of the petitioner and in the discretion of the judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in other cases, and may be called and examined by the judge on his own motion. If it is found that the petitioner is of sound mind and capable of taking care of himself and property, his restoration to capacity shall be adjudged and the guardianship of such person if such person is not a minor shall cease.

ARTICLE 3. — THE POWERS AND DUTIES OF GUARDIANS.

- § 350, Prob. C. **§ 6553. Payment of debts.** Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and income of his real estate if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof and disposing of the same in the manner provided by law for the sale of real estate of decedents.
- § 351, Prob. C. **§ 6554. Collect accounts and appear in legal proceedings.** Every guardian must settle all accounts of the ward and demand, sue for and receive all debts due to him, or may with the approbation of

the county court compound the same and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings unless a special guardian is appointed for that purpose.

§ 6555. Rules for management of estate of ward. Every § 352, Prob. C.
guardian must manage the estate of his ward frugally and without waste and apply the income and profits thereof as far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family if there is any; and if such income and profits are insufficient for that purpose, the guardian may sell the real estate upon obtaining a decree of the county court therefor and must apply the proceeds of such sale as far as may be necessary to the maintenance and support of the ward and his family if there is any.

§ 6556. Maintenance and support of ward. When a guardian § 353, Prob. C.
has advanced for the necessary maintenance, support and education of his ward an amount not disproportionate to the value of his estate or his condition of life, and the same is made to appear to the satisfaction of the court by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlement. Whenever a guardian fails, neglects or refuses to furnish suitable and necessary maintenance, support or education for his ward, the court may order him to do so and enforce such order by proper process. Whenever any third person at his request supplies a ward with suitable and necessary maintenance, support or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate and enforce such payment by due process.

§ 6557. Inventory and account of ward's estate. Every § 355, Prob. C.
guardian must return to the county court an inventory of the estate of his ward within three months after his appointment, and annually thereafter; when the value of the estate exceeds the sum of twenty thousand dollars, semiannual returns must be made to the court. The court may upon application made for that purpose by any person compel the guardian to render an account of the estate. The inventories and accounts so to be returned or rendered must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the estate of decedents. Whenever any other property of the estate of any ward is discovered not included in the inventory of the estate already returned and whenever any other property has been succeeded to or acquired by any ward or for his benefit, the like proceedings must be had for the return and appraisal thereof that are herein provided in relation to the first inventory and return.

§ 6558. Settlement at end of year. The guardian must, § 356, Prob. C.
upon the expiration of a year from the time of his appointment and as often thereafter as he may be required, present his accounts to the county court for settlement and allowance.

§ 6559. Account by one of joint guardians. When an § 357, Prob. C.
account is rendered by two or more joint guardians, the court may in its discretion allow the same upon oath of any of them.

§ 358, Prob. C. **§ 6560. Expenses and pay of guardians.** Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust and he must also have compensation for his services as the court in which his accounts are settled deems just and reasonable.

ARTICLE 4. — SALES OF PROPERTY AND DISPOSITION OF PROCEEDS.

§ 359, Prob. C. **§ 6561. Sale of property may be made, when.** When the income of an estate under guardianship is not sufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose upon obtaining a decree therefor.

§ 360, Prob. C. **§ 6562. Sale of property for investment.** When it appears to the satisfaction of the court upon the petition of the guardian, that for the benefit of his ward his real estate or some part thereof should be sold, and the proceeds put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose upon obtaining a decree therefor.

§ 361, Prob. C. **§ 6563. Proceeds of sale, how applied.** If the estate is sold for the purposes mentioned in this article, the guardian must apply the proceeds of the sale to such purposes as far as necessary, and put out the residue, if any, on interest or invest it in the best manner in his power until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose as far as may be necessary in like manner as if it had been personal estate of the ward.

§ 362, Prob. C. **§ 6564. Investment, how made.** If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment or in pursuance of any order that may be made by the county court.

§ 363, Prob. C. **§ 6565. Petition for sale.** To obtain a decree for such sale, the guardian must present to the county court of the county, in which he was appointed, a petition therefor setting forth the condition of the estate of his ward and the facts and circumstances on which the petition is founded tending to show the necessity or expediency of a sale.

§ 364, Prob. C.
am'd. **§ 6566. Hearing and order of sale.** If it appears to the court from the petition that it is necessary or would be beneficial to the ward that the real estate or some part of it should be sold or that the real and personal estate should be sold, the court or judge must thereupon issue a citation to the next of kin of the ward and all persons interested in the estate to appear before the court and answer thereto.

§ 366, Prob. C. **§ 6567. Court to hear proofs.** The county court, at the time and place appointed or such other time to which the hearing is postponed upon proof of the service of the citation, must hear and examine the proofs and allegations of the petitioner and of the next of kin and all other persons interested in the estate who oppose the application.

§ 367, Prob. C. **§ 6568. Guardian and witnesses.** On the hearing the guardian may be examined on oath and witnesses may be produced and examined by either party.

§ 6569. Order of sale, to state what. If after a full examination it appears necessary or for the benefit of the ward that his real estate or some part thereof should be sold, the court may make a decree directing such sale specifying therein the causes or reasons why the sale is necessary or beneficial and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale. § 369, Prob. C.

§ 6570. Bond to be given before sale. Every guardian authorized to sell real estate must before the sale give bond with sufficient sureties, to be approved by the judge, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for in this chapter and chapter 5 of this code. § 370, Prob. C. am'd.

§ 6571. Law of estates governs guardians unless otherwise declared. All proceedings under petitions of guardians for sales of property of their wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of accounts, must be had and made as provided and required by the provisions of law concerning the estates of decedents unless otherwise specially provided in this chapter. § 371, Prob. C.

§ 6572. Order in force one year. No decree granted in pursuance of this article continues in force more than one year after granting the same without sale being had. § 372, Prob. C.

§ 6573. Terms of sale. Security. All sales of real estate of wards must be for cash or for part cash and part deferred payments not to exceed three years, bearing date from date of sale as in the discretion of the judge is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers a bond and mortgage on the real estate sold with such additional security as the judge deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon. § 373, Prob. C.

§ 6574. Order to invest proceeds. The county court, on the application of a guardian or any person interested in the estate of any ward after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales and any other of his ward's money in his hands in real estate or in any other manner most to the interest of all concerned therein; and the court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects as circumstances require. § 374, Prob. C.

ARTICLE 5.—NONRESIDENT GUARDIANS AND WARDS.

§ 6575. Guardian for nonresident ward. When a person liable to be put under guardianship according to the provisions of this chapter resides without this state and has estate therein, any friend of such person or any one interested in his estate in expectancy or otherwise may present a petition to the county judge of any county in which there is any estate of such absent person for the appointment of a guardian, and if after a citation to all interested § 375, Prob. C. am'd.

and a full hearing and examination it appears proper, a guardian for such absent person may be appointed.

§ 376. Prob. C. **§ 6576. Power same as in other cases.** Every guardian appointed under the preceding section has the same powers and performs the same duties with respect to the estate of the ward found within the state and with respect to the person of the ward, if he shall cease to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

§ 377. Prob. C. **§ 6577. Guardian must give bond.** Every such guardian must give bond in the manner and with the like conditions as hereinbefore provided for other guardians except that the provisions respecting the inventory, the disposal of the estate and effects and the account to be rendered by the guardian must be confined to such estate and effects as come to his hands in this state.

§ 379. Prob. C. **§ 6578. Removal of property.** When the guardian and ward are both nonresidents and the ward is entitled to property in this state, which may be removed to another territory, state or foreign country without conflict with any restriction or limitation thereupon or impairing the right of the ward thereto, such property may be removed to the territory, state or foreign country of the residence of the ward upon the application of the guardian to the judge of the county court of the county in which the estate of the ward or the principal part thereof is situated.

§ 380. Prob. C. **§ 6579. Application for removal, contents.** The application must be made by petition and citation must issue to the resident executor, administrator or guardian if there is such, and upon such application the nonresident guardian must produce and file a certificate under the hand of the clerk, judge, surrogate or other authorized officer and the seal of the court from which his appointment was derived, showing:

1. A transcript of the record of his appointment.
2. That he has entered upon the discharge of his duties.
3. That he is entitled by the laws of the territory, state or country of his appointment to the possession of the estate of the ward; or must produce and file a certificate under the hand and seal of the clerk, judge, surrogate or other authorized officer of the court having jurisdiction in the country of his residence of the estates of persons under guardianship or of the highest court of such territory, state or country, that by the laws of such country the applicant is entitled to the custody of the estate of his ward without the appointment of any court. Upon such application unless good cause to the contrary is shown, the county court must make an order granting to such guardian leave to take and remove the property of his ward to the territory, state or place of his residence, which is authority to him to sue for and receive the same in his own name for the use and benefit of his ward.

§ 381. Prob. C. **§ 6580. Effect of order for removal.** Such order is a discharge of the executor, administrator, local guardian or other person in whose possession the property may be at the time the order is made on filing with the county court the receipt therefor of the foreign guardian of such absent ward.

ARTICLE 6. — GENERAL AND MISCELLANEOUS PROVISIONS.

§ 6581. Concealment or embezzlement of ward's property. § 382, Prob. C.
Upon a complaint made to him by any guardian, ward, creditor or other person interested in the estate or having a prospective interest therein as heir or otherwise against any one suspected of having concealed or conveyed away any of the money, goods, effects or an instrument in writing belonging to the ward or to his estate, the county court may cite such suspected person to appear before it and may examine and proceed with him on such charge in the manner provided by law with respect to persons suspected of and charged with concealing or embezzling the effects of a decedent.

§ 6582. Marriage of minor terminates guardianship. § 384, Prob. C.
The marriage of a minor ward terminates the guardianship; and the guardian of an insane or other person may be discharged by the judge of the county court when it appears to him on the application of the ward or otherwise that the guardianship is no longer necessary.

§ 6583. Bonds must be preserved. § 386, Prob. C.
Every bond given by a guardian must be filed and preserved in the office of the county judge; and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

§ 6584. Action against sureties. Three year's limitation. § 387, Prob. C.
No action can be maintained against the sureties on any bond given by a guardian unless commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

§ 6585. Action for recovery of an estate. Limitation. § 388, Prob. C.
No action for the recovery of any estate sold by a guardian can be maintained by the ward or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship or when a legal disability to sue exists by reason of minority or otherwise at the time when the cause of action accrues within three years next after the removal thereof.

§ 6586. More than one guardian, when. § 389, Prob. C.
The court in its discretion may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and be liable in all respects as a sole guardian.

§ 6587. Bonds run to the state.
Except when otherwise specially provided by this code all bonds and undertakings in anywise required by the provisions of this code shall run to the state of North Dakota as nominal payee and an action may be brought and maintained on any such bond or undertaking by and in the name of any person injured by any violation of the provisions thereof.

CHAPTER 8.

PRACTICE IN COUNTY COURTS WITH INCREASED JURISDICTION.

§ 1, c. 43, 1895.

§ 6588. General provisions to apply. The general provisions of law which may at any time be in force relating to the district courts, and to civil and criminal proceedings therein shall relate also to the county courts having increased jurisdiction and the rules of practice of district courts shall be in force in said county courts, unless inapplicable and except as herein otherwise provided.

§ 2, c. 43, 1895.

§ 6589. Terms of court. The regular term of the county court shall be held at the county seat, commencing at 9 o'clock A. M. on the first Tuesday of each calendar month for the trial of such civil and criminal actions as may be brought before such court.

§ 3, c. 43, 1895.

§ 6590. Calendar. The county judge shall, on the first day of each term, or as soon thereafter as may be, prepare a calendar of the causes standing for trial at such term, placing the causes upon such calendar in the order in which the same are numbered on the docket and setting the causes for trial upon convenient days during such term; provided, that no cause shall be set for trial upon the first day of said term without the consent of all parties thereto.

§ 4, c. 43, 1895.

§ 6591. Appeals from county court. In all actions brought under the provisions of this chapter an appeal may be taken to the district court of the county or to the supreme court, and if the appeal is to the district court it shall be taken in the same manner as appeals from justice's court and if the appeal is to the supreme court it shall be taken in the same manner and pursuant to the same rules as appeals from the district court; provided, that in civil actions when the amount in controversy, exclusive of costs, is less than two hundred and fifty dollars an appeal to the district court only shall lie; and provided, further, that an appeal to the district court shall not be effectual for any purpose unless an undertaking is filed with two or more sureties in a sum equal to the amount in controversy or to the value of the specific property in controversy plus one hundred dollars.

§ 5, c. 43, 1895.

§ 6592. Concurrent jurisdiction on appeal. Such county courts shall have concurrent jurisdiction with the district courts in appeals from all final judgments of justices of the peace, police, city or township justices, and the proceedings on such appeals shall be the same as now or may hereafter be provided for appeals from judgments of justices of the peace to district courts.

§ 6, c. 43, 1895.

§ 6593. Cause certified to district court, when. In any civil or criminal cause of which this court has jurisdiction, whenever at any time before said cause is called for trial it shall appear to the court by affidavit, or if the court shall 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 direct said cause and all papers and documents connected therewith to be certified to the district court of the county wherein said county court is held; and such papers shall be delivered to the clerk of the district court at least one day before the first day of the next term thereof and shall be placed upon the trial calendar and stand for trial the same as cases originally commenced in the district court.

§ 6594. **Manner of selecting jury.** Juries in the county court shall be selected by the county judge and summoned in the same manner as is now provided by law for selecting juries before justices of the peace; provided, that each party shall be entitled to the same number of challenges as is now or may hereafter be allowed in the district court in like actions. § 7, c. 43, 1895.

§ 6595. **New trials.** The county court shall have authority to grant new trials, affirm, modify or set aside judgments in actions tried in such court upon a statement of the case prepared and settled in the manner provided in the code of civil procedure. § 8, c. 43, 1895.

§ 6596. **May issue process.** The several county courts shall have power to issue all summons, citations, subpoenas, executions, warrants and process authorized by law which may be necessary to carry into effect any order, judgment or decree thereof, to compel the attendance of witnesses or to carry into execution the powers with which they are vested. § 9, c. 43, 1895.

§ 6597. **Service in other county.** All writs, summons and other process may be executed and served only in the county; provided, that when there is more than one defendant and one of such defendants has been served in the county, service may be made on the other defendants in any county in this state. § 10, c. 43, 1895.

§ 6598. **Continued causes.** When for any cause the county judge fails to attend at the commencement of any regular term or at the time to which any cause is assigned for trial or at the time to which any cause may be continued, the parties shall not be obliged to wait more than one hour and if he does not attend within the hour and no other disposition of the case is made by such judge, the parties in attendance shall be required to attend at 9 o'clock A. M. of the following day and if such judge shall not attend at that time, the cause shall stand continued until the first day of the next regular term. § 11, c. 43, 1895.

§ 6599. **Adjournment.** The time for which any civil action may be adjourned shall be regulated by the county judge in the exercise of a reasonable discretion; provided, that such action cannot be adjourned over more than three regular terms of such court upon the application of either party without the consent of the other. In criminal actions if the defendant has been committed to jail, he must be tried at the first term of such court held after such commitment. If the defendant in a criminal action has given bail for his appearance, his trial must not be postponed longer than until the third term after such bail is given. § 12, c. 43, 1895.

§ 6600. **Bailiff.** The judge of the county court may appoint a competent person as bailiff of the court, who shall hold his office at the pleasure of the judge. Such bailiff shall have the same powers as a constable and shall receive for his services the same fees as are prescribed for constables and bailiffs. § 13, c. 43, 1895.

§ 6601. **Criminal jurisdiction.** Concurrent jurisdiction, power and authority with the district court is hereby conferred and imposed upon county courts having increased jurisdiction of all criminal offenses of which the district court of said county has jurisdiction, below the grade of felony, and of any person accused thereof, and to hear, try, determine, pronounce judgment and sentence and take and have all necessary proceedings concerning or relating thereto as provided by law. The necessary jurisdiction, power and authority is hereby conferred and imposed upon the county court. § 14, c. 43, 1895.

§ 15, c. 43, 1895.

§ 6602. Defendant bound over to. In any criminal action or proceeding for any criminal offense of which the county court has jurisdiction, any justice of the peace or other examining magistrate having jurisdiction must admit to bail, bind over or commit for trial the accused to the county court of such county and the information shall be filed in such county court. If any person accused of a criminal offense is so bailed, bound over or committed for trial to the county court for a crime of which such court has not jurisdiction, such proceeding shall not abate and such county court shall not lose jurisdiction of such person and proceeding, but shall certify the same to the district court of such county and such proceeding shall thereupon be tried in the district court with the same force and effect as if such action or proceedings had been originally commenced therein. If any examining magistrate shall at any time bind over a defendant to the district court for an offense of which the county court has jurisdiction or if it shall appear by evidence or otherwise at any time to the judge of the district court that the offense with which the defendant is or should be charged is triable in the county court, the judge of the district court may certify such cause and all proceedings relative to any person accused of such offense to the county court of such county for trial, determination and adjudication, and thereupon the same and all the papers and files therein shall be transferred by the clerk of the district court to the county court without any further order or certificate and such cause shall thereupon be tried in the county court with the same force and effect as if such cause had originally been commenced therein.

§ 16, c. 43, 1895.

§ 6603. Jury trial. In civil actions when the value in controversy or sum demanded exceeds fifty dollars, either party may demand a jury trial, but such demand shall be made on or before the first day of the term upon the calendar of which said cause appears. In criminal actions when the defendant is arraigned he shall be informed by the court of his right to trial by jury and if he waives his right to a jury trial, an entry to that effect shall be made in the court minutes.

§ 17, c. 43, 1895.

§ 6604. Warrant of arrest. The county court in term time or the judge in vacation may issue warrants of arrest for persons against whom an information has been filed, shall fix the amount of bail to be required of the accused and the clerk shall indorse the same upon the warrant except when the warrant is issued in term time, when the same may be returnable forthwith and it shall not then be necessary to fix the amount of bail until the accused is brought into court.

§ 18, c. 43, 1895.

§ 6605. Receive plea and pass judgment. The court may receive the plea of guilty and pass judgment in term time or vacation; if the accused waives a jury he may be tried by the court without a jury in term time upon notice being first given to the state's attorney.

§ 19, c. 43, 1895.

§ 6606. Preliminary examination. No preliminary examination shall be necessary before trial in criminal actions in the county court.

§ 20, c. 43, 1895.

§ 6607. Assignment of counsel. In all criminal cases triable in the county court when it is satisfactorily shown to the court that the defendant has no means and is unable to employ counsel, the court shall in such cases assign counsel for the defense and allow and direct to be paid by the county in which said court is held a reasonable and just compensation to the attorney or attorneys assigned for such ser-

vices as they may render; provided, however, that such compensation shall not exceed twenty-five dollars in any one case.

§ 6608. **Summons.** The summons shall require the defendant to file a copy of his pleading with the clerk of the county court within ten days after the service of the summons exclusive of the day of service. § 21, c. 43, 1895.

§ 6609. **Complaint filed, when.** The complaint in any civil action together with one copy for each defendant must be filed with the clerk of the county court within five days after the issuance of the summons in such action and any action in which the complaint shall not have been filed in accordance with the provisions of this section shall be dismissed on motion of the defendant. In no case shall the defendant or his attorney be entitled to have a copy of the complaint served upon him. § 22, c. 43, 1895.

§ 6610. **Answer or demurrer.** The defendant must file his answer or demurrer with the clerk of the county court within ten days after the service of the summons. § 23, c. 43, 1895.

§ 6611. **Time of trial.** When the time to answer does not expire at least ten days before the first day of the next term of court, the cause shall stand for trial at the next succeeding term thereafter without further notice to defendant. § 24, c. 43, 1895.

§ 6612. **Judgment lien.** Any person having a judgment rendered by the county court may cause an abstract thereof to be filed in the office of the clerk of the district court in any county in the state and when such abstract is filed in the office of the clerk of the district court and docketed as a judgment, such judgment shall be a lien upon all real estate in the county belonging to any of the defendants against whom such judgment is rendered. Execution on any judgment shall issue out of the county court attested in the name of the judge and sealed with the seal of the court. Execution may be issued to any county where an abstract of such judgment is docketed; before such execution shall be levied, it shall have indorsed thereon by the clerk of the district court of such county the day and hour when such abstract was filed and the amount due thereon. § 25, c. 43, 1895.

§ 6613. **Clerk of district court ex officio clerk of county court.** In all counties having county courts with civil and criminal jurisdiction, having a population of less than eighteen thousand inhabitants, the clerk of the district court shall be clerk of the county court in the same county and shall have the care and custody of all books and papers belonging to such county court which relate to or have any connection with any actions or proceedings commenced in such court by reason of its having increased civil and criminal jurisdiction conferred upon it. Such clerks of the district court and their deputies shall perform all the duties of the clerks of such courts in all actions and proceedings commenced in the county courts by virtue of its enlarged jurisdiction in the same manner as they are required to perform the duties of the clerks or deputy clerks of the district courts, so far as the provisions of law relating to that subject are applicable, and may demand and receive the same fees and compensation therefor except that they shall be entitled to receive no per diem for attendance in court. The judge of the county court, having increased jurisdiction in counties having a population of eighteen thousand or more, shall have power to appoint a clerk of such court, whose duties and powers shall be as nearly as may be the same as those of clerks of § 26, c. 43, 1895.

district courts. Such clerk shall hold his office during the pleasure of the judge appointing him and shall receive a salary of one thousand two hundred dollars a year. He shall charge and receive for all acts performed by him the same fees and commissions as are allowed to clerks of the district courts. He shall keep a true account of all fees and commissions received by him in a book of record to be kept for that purpose and on the first of each calendar month shall pay the same to the treasurer of the county.

§ 27, c. 43, 1895.

§ 6614. Population, how determined. The county auditor or county clerk shall determine the population of his county by multiplying by five the total vote cast in the last general election of county officers and the result shall be taken as the population of such county.

§ 28, c. 43, 1895.

§ 6615. Salary of judge. As compensation for their services under this act there shall be allowed and paid to the judges of county courts having civil and criminal jurisdiction in all counties having a population of eighteen thousand inhabitants the sum of two thousand five hundred dollars per annum, and in counties having less than eighteen thousand inhabitants the sum of two thousand dollars per annum payable monthly by such county.

§ 29, c. 43, 1895.

§ 6616. Process, by whom served and compensation. All writs and process in county courts may be served by a constable as well as a sheriff and when served by a constable he shall be entitled to the same fees as the sheriff receives for like service.

§ 30, c. 43, 1895.

§ 6617. Court stenographer. The judge of any county court having civil or criminal jurisdiction is authorized in his discretion to appoint a court stenographer of such court. Such stenographer shall qualify in the same manner and his duties and compensation shall be the same as the court stenographer of a district court; such compensation shall be paid in the same manner as that of the court stenographer of the district court; provided, that such court stenographer shall not be appointed in any county having less than eight thousand inhabitants, unless the board of county commissioners shall first authorize such appointment.

JUSTICES' CODE.

CHAPTER 1.

TITLE AND APPLICATION OF CODE.

§ 6618. **Title.** This act shall be known as the justices' code of the state of North Dakota.

§ 6619. **Application of code.** The provisions of this code are applicable throughout the state to all justices of the peace now in office or hereafter chosen, and to every police magistrate acting ex officio as justice of the peace.

§ 1, c. 129, 1881.
6, art. 10, c.
73, 1887.
am'd.

CHAPTER 2.

GENERAL POWERS OF JUSTICES OF THE PEACE.

§ 6620. **Office of justice, where.** Every justice of the peace shall keep his office and hold his court at a place by him selected, which must be within the county, civil township, city or town as the case may be in which he may have been elected or appointed.

§ 1, Jus. C.
am'd.

§ 6621. **Court always open. Clerk.** A justice's court is deemed to be always open and every judicial act of a justice is deemed to be the act of the court. A justice is his own clerk, but when required by law to reduce testimony to writing, he may employ a clerk for that purpose.

§ 1, Jus. C.
am'd.

§ 6622. **Powers of.** Subject to the provisions hereinafter contained, each justice of the peace has power and authority to hold a court, maintain order and decorum and take cognizance therein according to law of all actions or other judicial proceedings within his jurisdiction and hear, try and determine the same or make such orders therein as may be prescribed by law and to issue in such action or proceeding all lawful process which may be necessary or proper, and require and enforce obedience thereto.

§ 97, Jus. C.
am'd.

§ 2, 33, Jus. C.
am'd.
1, c. 80, 1891.

§ 6623. Jurisdiction. Justices of the peace and their courts have jurisdiction in all civil actions when the amount in controversy exclusive of costs does not exceed two hundred dollars; but in no case do they have jurisdiction when the boundaries of or title to real estate comes in question. Subject to the foregoing restrictions the jurisdiction of each justice of the peace extends to the following actions and proceedings:

1. An action for the recovery of money only when the sum for which judgment is demanded does not exceed two hundred dollars. In applying this subdivision a counterclaim is to be deemed a separate and distinct action.

2. An action to recover possession of personal property or its value, when the value of the property together with the sum if any demanded as damages does not exceed two hundred dollars.

3. An action given by statute to foreclose or enforce a lien upon chattels, or trespassing animals, when the amount of the lien or damages claimed does not exceed two hundred dollars.

4. An action for forcible detainer of real property irrespective of value, when the amount demanded therein for rents and profits or damages does not exceed two hundred dollars.

5. The entry of judgment by confession without action for an amount not exceeding two hundred dollars upon the statement of a defendant authorizing judgment in a justice's court.

§ 3, Jus. C.
am'd.

§ 6624. Criminal jurisdiction. The jurisdiction and authority of justices of the peace to prevent the commission of public offenses, to institute searches and seizures, to require the arrest and detention of persons charged with crime, to require and accept bail and otherwise act as magistrates in matters of crime is prescribed by the code of criminal procedure. Each justice's court has also jurisdiction and authority coextensive with the county or judicial subdivision to hear, try and determine every criminal action in which the offense charged is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a period not to exceed thirty days or by both such fine and imprisonment, and every other criminal action in which jurisdiction is specially conferred by law.

§ 103, Jus. C.
am'd.

§ 6625. Code of civil procedure, how far applicable. The provisions of the code of civil procedure shall govern the proceedings in justices' courts as far as applicable when the mode of procedure is not prescribed by this code, but the powers of justices' courts are only as herein prescribed.

§ 98, Jus. C.
am'd.

§ 6626. Process without blanks. Every summons, execution or other process issued by a justice of the peace except a subpoena must be issued without a blank left to be filled by another, otherwise it is void.

§ 83, Jus. C.
am'd.

§ 6627. Docket, entries in. Every justice of the peace shall keep a docket in which shall be entered in continuous order with the proper date and at the time when each act is done:

1. The title of each action or proceeding.
2. The object of the action or proceeding.
3. The issuance of process stating the particular process issued, when returnable, and the return of the officer.
4. The appearance of the parties either with or without process, the manner in which they appear or their nonappearance according to the facts.

5. A brief minute referring to every pleading or other paper, motion filed in writing, and a concise statement of each pleading or motion made orally.

6. Every ruling or decision of the court upon the pleadings or upon the motion or application of a party.

7. Every postponement stating upon whose application and to what time.

8. The demand for trial by jury, by whom made, the agreement of the parties if any respecting the jury, the order for the jury, the issuance of a venire, to whom delivered and the time appointed for the return of the jurors and for trial.

9. The return of the venire and the names of the jurors who are impaneled and sworn.

10. The names of all witnesses sworn and at whose request.

11. The verdict of the jury when received, or if they are discharged for failure to agree, the fact of such discharge.

12. The judgment of the court, separately stating the amount taxed and allowed as costs.

13. The stay of execution if a stay is taken.

14. The giving of an abstract to be filed in the district court.

15. The issuing of execution, when and to whom issued, the renewal thereof if any and the return of the officer.

16. A statement of all moneys received by the justice upon the judgment, from whom received and the disposition made of the same.

17. A minute of the appeal referring to the notice, undertaking and other papers therein.

18. Every other matter or proceeding required to be entered by a special provision of statute.

§ 6628. Docket, evidence of. A justice's docket is deemed true and correct as to all matters appearing therein as required by law and cannot be disputed in a collateral proceeding. The docket or a duly certified transcript thereof is competent evidence of the matters to which it relates.

§ 6629. Docket to be indexed. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment with a reference to the page of entry. The names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family name.

§ 6630. Docket to be deposited with successor. Every justice of the peace upon the expiration of his term of office must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors or any other which may be in his custody to be kept as public records.

§ 6631. Docket, where deposited when vacancy occurs. If the office of a justice becomes vacant by his death, removal or otherwise before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the township or county to be by him delivered to the successor of such justice.

§ 6632. Jurisdiction of successor. Any justice, with whom the docket of his predecessor or of any other justice, is deposited as hereinbefore provided has the same jurisdiction of all actions and proceedings entered in such docket and may exercise the same powers therein as if originally commenced before him.

§ 88, JUS. C.
am'd.

CHAPTER 3.

PROCEDURE IN CIVIL ACTIONS.

ARTICLE 1.—COMMENCEMENT OF AN ACTION.

§ 4, Jus. C.
am'd.

§ 6633. Actions, where commenced and tried. The county in which a civil action in a justice's court must be commenced and tried is as follows:

1. An action of forcible detainer or for trespass or other injury to real property, or an action to recover specific personal property, or to foreclose or enforce a lien upon chattels or trespassing animals must be brought in the county in which the subject of the action or property upon which the lien is claimed is situated.

2. An action to recover a penalty or forfeiture prescribed by statute or to recover of a public officer, or his deputy, agent or surety for a violation of official duty or any act done by color of his office must be brought in the county in which the cause of action arose.

3. Every other action must be tried in the county in which the defendant or one of several defendants resides or is served with summons, or in which a warrant of attachment is levied on property of the defendant except as provided in the next subdivision.

4. An action upon a contract stipulating for payment at a particular place may be brought in the county in which such place is situated.

§ 13, Jus. C.
am'd.

§ 6634. Minor's appearance, how made. The parties to a civil action are the same as in the district court, but when a minor is a party he must prosecute or defend by guardian. If he has no general guardian, a special guardian must be appointed by the court. A special guardian may also be appointed in any case in which it appears to be for the benefit of the minor. If the minor is plaintiff, the appointment must be made before issuing the summons. If the minor is defendant, the appointment shall be made at or before the time for answering. If the minor is not less than fourteen years of age, he may select the person to be appointed otherwise such selection may be made by a relative or friend or by the court.

§ 11, Jus. C.
am'd.

§ 6635. Action, how commenced. An action in a justice's court is commenced by the issuance of a summons or by the voluntary appearance and pleading of the parties. An appearance for any purpose except to interpose or maintain an objection to the jurisdiction assumed under the process is a voluntary appearance.

§ 1, c. 89, 1881.
am'd.

§ 6636. Surety for costs, how given. Nonresidents. The justice shall in all cases, when plaintiff is a nonresident of the state or a corporation before issuing a summons, require of the plaintiff sufficient surety for costs. The surety must be a resident of the county. His obligation shall be complete by simply indorsing the summons or signing his name on the complaint as security for costs. In all other cases the justice may in his discretion require surety for costs.

§ 14, Jus. C.
am'd.

§ 6637. Summons, what to contain. The style of the summons shall be "The State of North Dakota." It must be addressed to the defendant and be signed by the justice and shall contain:

1. The name of the county and the title of the court in which the action is commenced and the names of the parties thereto.

2. A direction that the defendant appear and answer the complaint of the plaintiff before the justice at his office at a time and place therein specified.

3. A sufficient statement of the cause of action to apprise the defendant of the nature thereof.

4. A notice that unless the defendant shall so appear and answer, the plaintiff will take judgment against him for a sum stated or other relief specified in the summons.

§ 6638. Attorney's name on summons. If the plaintiff appears by attorney the name of the attorney must be indorsed on the summons. § 14, Jus. C.

§ 6639. Time for defendant's appearance. The time specified in the summons for the appearance of the defendant shall be not less than three nor more than fifteen days from the date on which it is issued. §§ 15, 38, Jus. C.
am'd.
§ 1, c. 139, 1885.
am'd.

§ 6640. Summons, how served. The summons may be served by a sheriff, constable or any other person not a party to the action, and must be served and returned with proof of service in the manner prescribed for personal service of summons by the code of civil procedure unless service is made by publication as provided in this code. § 17, Jus. C.
§ 1, c. 34, Sp.
1883.
§ 2, c. 138, 1885.
am'd.

§ 6641. Summons in other counties, how served. In every action triable in the county, as prescribed by the first, second and fourth subdivisions of section 6633, the summons may be served in any county of the state. In other actions the summons cannot be served on a defendant out of the county of the justice by whom it was issued except: § 16, Jus. C.
am'd.

1. When the action is upon the contract or obligation of two or more parties, one of whom resides in the county and is served therein.

2. When an attachment issued in the action is levied on property of the defendant within the county.

§ 6642. Service, how made. Service by delivery of a copy of the summons to the defendant in person within the county must be made at least three days before the time fixed for the appearance of the defendant. Service elsewhere or personal service in any other mode must be made at least seven days before the time fixed for the appearance of the defendant. § 16, Jus. C.
am'd.

§ 6643. Service by publication. In an action to foreclose or enforce a lien upon chattels or trespassing animals, or an action in which an attachment has been levied on personal property of the defendant within the county, if the summons is returned not served, the plaintiff may at the time therein specified for answering apply for and receive a second summons directing the defendant to appear and answer at a specified time not less than twenty-five nor more than thirty days from the date thereof. Such application must be made upon a verified complaint alleging the lien or levy relied on and demanding that the property be applied to the satisfaction of his claim, and must be supported by affidavit, stating that to the best knowledge, information and belief of the person making it, personal service of the summons cannot be made upon the defendant within the state and stating his post office address or the fact that the same is not known. The summons must be substantially in the following form filling blanks according to the facts: § 17, Jus. C.
§ 1, c. 31, Sp.
1883.
§ 2, c. 138, 1885.
am'd.

State of North Dakota, }
 County of..... } ss. In Justice Court,
 C. D., plaintiff, BeforeJ. P.
 vs.
 E. F., defendant.

The state of North Dakota to said defendant:

By this second summons herein you are directed to appear before me at my office in (designating the place) at.....o'clock ...M. of the....day of.....18...., there to answer the complaint of C. D. against you, alleging (here give a sufficient statement of the cause of action to apprise the defendant of the nature of the plaintiff's claim and the particular property in question), and demanding (here state the demand); and you are notified that unless you so appear and answer the plaintiff will take judgment against you accordingly.

Given this.....day of....18....

(Official signature of the justice.)

The justice shall indorse on the summons a direction to the effect that it may be served by publication in some newspaper of the county naming it, or in some newspaper elsewhere in the state if none is published in the county. Service of the summons may be made by publication of the same in one issue of said newspaper each week for three successive weeks, the last publication being at least three days before the time at which the defendant is directed to appear, and by forthwith mailing a copy of the summons postage paid and directed to the defendant at his post office address, unless it is stated in the affidavit that his address is unknown. But personal service of the summons on the defendant at any place in or out of the state, if made at least ten days before the time at which he is directed to answer, is equivalent to service by publication and mailing. The proof of service must be made by affidavit of some person having knowledge of the facts.

ARTICLE 2. — APPEARANCE, POSTPONEMENT AND CHANGE OF VENUE.

§ 12, Jus. C.
am'd.

§ 6644. Appearance, in person or by attorney. In a justice's court the parties may appear and act in person or by attorney and any person may act as attorney except a practicing attorney, or other person occupying the same room in which the justice has his office, or a person employed in serving the summons or venire.

§ 18, Jus. C.

§ 6645. One hour for appearance. The parties are entitled to one hour in which to appear after the time stated in the summons or any time fixed for further proceedings in the action and neither party is bound to wait longer for the other.

§ 44, Jus. C.
am'd.

§ 6646. Trial, when commenced. If neither party appears within the time limited by the preceding section, the action shall be deemed discontinued and there shall be no further proceedings therein unless by the consent of both parties; if both parties appear, the case may be called when they appear, but if only one or more of the parties appear, the case shall not be called until the expiration of the hour and in either case shall be disposed of as hereinafter prescribed.

§ 100, Jus. C.
am'd.

§ 6647. Other justice called, when. In case of the sickness or other disability or necessary absence of a justice, on a return of a summons or at the time appointed for a trial, another justice

of the same township or county may at his request attend in his behalf, and thereupon is vested with the power for the time being of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice subscribed by him must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable may resume jurisdiction.

§ 6648. Postponements. The court may of its own motion or on application of a party postpone the hearing or trial: § 45, Jus. C.
am'd.

1. For not exceeding one day if at the time specified in the summons or order of the court, the justice is sick or engaged in the trial of another action.

2. For not exceeding two days, if by amendment of a pleading or allowance of time to plead or amend, a postponement is rendered necessary.

3. For not exceeding three days, when a jury is required for the trial of an issue of fact.

4. For not exceeding thirty days, when a second summons is issued as prescribed by section 6643 of this code.

§ 6649. Postponement by consent. The court may, by consent of the parties given in writing or in open court, postpone the trial to a time agreed upon by the parties. § 46, Jus. C.

§ 6650. Postponement by application. The trial may be postponed upon the application of either party for a period not exceeding sixty days: § 47, Jus. C.
1. c. 86, 1885.
am'd.

1. The party making the application must prove by his own oath or otherwise, that he cannot for want of material testimony, which he expects to procure, safely proceed to trial and must show in what respect the testimony expected is material and that he has used due diligence to procure it and has been unable to do so.

2. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the justice and that the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witness was produced; but the court may require the party making the application to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given and agrees that it be considered as actually given on the trial or offered and overruled as improper, the trial must not be postponed.

3. If the trial is postponed, the depositions of witnesses residing out of the county or state may be taken either upon commission issued by the justice or upon notice to take depositions in the same manner as is provided by the code of civil procedure; and such depositions shall, when completed, be directed to the justice and be published by the justice in the same manner as depositions are published by the clerk of the district court.

§ 6651. Postponement, time of. No postponement shall be granted as prescribed in the preceding section for more than five days, unless the party applying for the postponement files an undertaking executed by a sufficient surety approved by the justice to the effect that he will pay to the adverse party all costs which he shall recover in the action. If the application is made by the defendant in an §§ 38, 48, Jus. C.
am'd.

action of forcible detainer, the undertaking must be to the effect that the surety will pay to the plaintiff whatever sum he shall recover in the action including all rents and profits that shall accrue to him during the postponement.

§ 5, Jus. C.

§ 6652. Change of venue. The court may at any time before the trial, on motion, change the place of trial in the following cases:

1. When it appears to the satisfaction of the justice before whom the action is pending by affidavit of either party that such justice is a material witness for either party.

2. When either party makes and files an affidavit that he believes he cannot have a fair and impartial trial before such justice by reason of the interest, prejudice or bias of the justice.

3. When from any cause the justice is disqualified from acting.

4. When the justice is sick or unable to act.

§ 6, Jus. C.
§ 1, c. 88, 1881.

§ 6653. Place of trial. One change. The place of trial cannot be changed on motion of the same party more than once. When the court orders the place of trial to be changed, the action must be transferred for trial to a justice's court the parties may agree upon, and if they do not so agree, then to the next nearest justice's court in the same county.

§ 9, Jus. C.
§ 1, c. 42, 1879.

§ 6654. Proceedings on change of trial. Jurisdiction. From the time the order changing the place of trial is made, the court to which the action is thereby transferred has the same jurisdiction over it as though it had been commenced in such court. After an order has been made transferring the action for trial to another court the following proceedings must be had:

1. The justice ordering the transfer must immediately transmit to the justice of the court to which it is transferred, on payment by the party applying of one dollar for the transcript, all the papers in the action together with a certified transcript from his docket of the proceedings therein.

2. Upon the receipt by him of such papers the justice of the court to which the case is transferred must issue a notice stating when and where the trial will take place, which notice must be served upon the parties at least one day before the time fixed for trial, unless such notice is waived by consent of the parties entered on the docket.

ARTICLE 3.—PLEADINGS AND ISSUES.

§ 19, Jus. C.
am'd.

§ 6655. Pleadings, what constitute. A pleading in a justice's court is not required to be in any particular form, but must be so expressed as to enable a person of common understanding to know what is intended. The pleadings may be oral or written and need not be verified unless otherwise specially prescribed.

§ 20, Jus. C.
am'd.

§ 6656. Pleadings, order of. The pleadings are as follows:

1. The complaint of the plaintiff.
2. The demurrer of the defendant to the complaint.
3. The answer of the defendant to the complaint.
4. The demurrer of the plaintiff to the answer.
5. The reply of the plaintiff.
6. The demurrer of the defendant to the reply.

§ 19, Jus. C.
am'd.

§ 6657. Issues, how classified. An issue arises upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other. Issues are of two kinds:

1. Of law; and,
2. Of fact.

§ 6658. **Issues of law.** An issue of law arises upon a demurrer to the complaint, answer or reply or to some part thereof. § 50, Jus. C. am'd.

§ 6659. **Issues of law, determined by court.** Issues of law must be determined by the court and be disposed of in the order in which they are presented before the trial of an issue of fact. § 52, Jus. C. am'd.

§ 6660. **Complaint.** The complaint is a concise statement of the facts constituting the plaintiff's cause of action with a demand for judgment, specifying the sum of money or the relief claimed. § 21, Jus. C. am'd.

§ 6661. **Demurrer, when.** The defendant may before answering demur to the complaint or to any cause of action therein alleged upon one or more of the grounds enumerated in section 5268 of the code of civil procedure. When any of the matters therein enumerated do not appear upon the face of the complaint, the objection may be taken by answer. § 22, Jus. C. am'd.

§ 6662. **Proceedings after demurrer.** If a demurrer to the complaint or to any cause of action therein is sustained, the plaintiff may amend within such time not exceeding two days as the court allows. If the demurrer is overruled, the defendant must answer forthwith. § 25, Jus. C. am'd.

§ 6663. **Answer.** The answer may contain a general denial of each allegation of the complaint or any distinct cause of action therein, or a specific denial of one or more of the material allegations thereof. It may also state in a plain and direct manner new matter constituting one or more defenses or counterclaims cognizable in a justice's court. § 23, Jus. C.

§ 6664. **Demurrer to answer.** The plaintiff may demur to the answer, or to the new matter alleged therein because it does not state facts sufficient to constitute a defense or counterclaim, as the case may be. § 24, Jus. C. am'd.

§ 6665. **Proceedings after demurrer.** If the demurrer is sustained, the defendant may amend his answer within such time not exceeding two days as the court allows. If the demurrer is overruled the plaintiff may reply forthwith but no reply is necessary except to a counterclaim. § 25, Jus. C. am'd.

§ 6666. **Amendments, when allowed.** Either party may be allowed to amend his pleading at any time before the conclusion of the trial or on appeal, if substantial justice will be promoted thereby, but when an amendment is offered after issue joined and it appears to the satisfaction of the court that a postponement will become necessary to the adverse party in consequence of such amendment, the court shall allow the amendment only upon payment of costs to the adverse party in such sum as may be deemed just. § 26, Jus. C. am'd.

§ 6667. **Demurrer to amended pleading.** When a pleading is amended the adverse party may demur, answer or reply forthwith, or within such time not exceeding two days, as the court allows. § 27, Jus. C. am'd.

§ 6668. **Genuineness of exhibits, how admitted.** If the plaintiff annexes to his complaint or files with the justice at the time of issuing the summons the original or a copy of the promissory note, bill of exchange or other written obligation for the payment of money upon which the action is brought, the defendant is deemed to admit the genuineness of the signature of the makers, indorsers, guarantors, acceptors or assignors thereof, unless he specifically denies the same in his answer and verifies the answer by his oath. § 61, Jus. C. am'd.

§ 6669. Pleadings to be in writing; when to be verified. The pleadings must be in writing, and in an action of forcible detainer or an action to recover damages for an injury to real property must be verified. No issue arises upon an allegation of title or boundary set forth in the complaint in such action unless the same is specifically denied in the answer.

§ 6670. Title to real estate. A question of title or boundary to real estate cannot be determined in a justice's court and when such question arises upon a material issue joined as prescribed in the preceding section, the justice must order a dismissal of the complaint and render judgment against the plaintiff for costs. When the question is not disclosed by the issue, but is manifested by controversy in the evidence as to a fact which is material to the plaintiff's case under a denial in the answer, the justice must discontinue the trial and order a dismissal of the complaint, specifying the reason for such dismissal and give judgment against the plaintiff for costs, to which end he may take the case from a jury if necessary.

§ 10, Jus. C.
am'd.

§ 6671. Title to real estate. District court. The defendant may, with or without other matter of defense, set forth in a verified answer facts showing that the title or boundary to real estate will come in question as a defense to the action or any distinct cause of action alleged in the complaint and may thereupon have the same transferred to the district court for the purpose of enabling him to maintain his defense by paying the justice a fee of one dollar for making a transcript and filing an undertaking executed by sufficient sureties to be approved by the justice, to the effect that he will pay all costs that may be adjudged against him in the district court not exceeding one hundred dollars. When the foregoing requirements are complied with the justice must immediately transfer the action accordingly and certify the pleadings and other papers with a transcript of his docket showing the reason of such transfer to the district court of his county, but if the action is transferred in part only, he must retain copies of the original papers. The district court acquires jurisdiction from the time when the papers are filed with the clerk and the action is deemed to be at issue therein ten days after the docketing. In other respects the proceedings therein shall be the same as if the action was originally commenced in that court.

ARTICLE 4. — PROVISIONAL REMEDIES.

§ 28, Jus. C.
am'd.

§ 6672. Attachment, writ of, when issued. In a case mentioned in section 5352 of the code of civil procedure, a writ to attach the personal property of the defendant may be issued by the justice at the time of or after issuing the summons and before answer on receiving an affidavit by or on behalf of the plaintiff, stating the same facts as are required to be stated by the affidavit specified in section 5356 of the code of civil procedure.

§ 29, Jus. C.
am'd.

§ 6673. Undertaking for attachment. Before issuing the writ the justice must require a written undertaking on the part of the plaintiff with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment not exceeding the sum specified in the undertaking.

§ 6674. Requisites of the writ. The writ may be directed to the sheriff or any constable of the county and must require him to attach and safely keep all the personal property of the defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant gives him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy such demand besides costs, in which case to take such undertaking. § 30, Jus. C. am'd.

§ 6675. Service and return of writ. The writ may be served by the sheriff or any constable of the county in which it is issued and returned in the same manner as warrants of attachment are served and returned in actions in the district court and with the same force and effect. § 31, Jus. C.

§ 6676. Claim and delivery, proceedings in. In an action to recover possession of personal property the plaintiff may, at the time of issuing the summons or at any time thereafter before answer, claim the delivery of such property to him; and article 2 of chapter 9 of the code of civil procedure is applicable to such claim when made in justices' court, the powers therein given and duties imposed on sheriffs being extended to constables and the word "justice" substituted for "judge."

ARTICLE 5.—FORCIBLE DETAINER.

§ 6677. Forcible detainer, when maintainable. This action is maintainable: § 34, Jus. C.

1. When a party has by force, intimidation, fraud or stealth entered upon the prior actual possession of real property of another and detains the same.

2. When a party after entering peaceably upon real property turns out by force, threats or menacing conduct the party in possession; or,

3. When he by force, or by menaces and threats of violence unlawfully holds and keeps the possession of any real property whether the same was acquired peaceably or otherwise; or,

4. When a lessee in person or by subtenant holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due; or,

5. When a party continues in possession after a sale of the real property under mortgage, execution, order or any judicial process after the expiration of the time fixed by law for redemption and after the execution and delivery of a deed.

6. When a party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a county court.

§ 6678. Notice to quit. In all cases arising under subdivisions 4, 5 and 6 of the preceding section, three days' written notice to quit must be given to the lessee, subtenant or party in possession before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. § 35, Jus. C.

§ 6679. Legal representative may bring action. The legal representative of a person who might have been plaintiff if alive may bring this action after his death. § 36, Jus. C.

§ 2, c. 87, 1881.
am'd. **§ 6680. No joinder of action. Counterclaim.** An action under the provisions of this article cannot be brought in connection with any other except for rents and profits accrued or damages arising by reason of the defendant's possession. No counterclaim can be interposed except as a set-off to a demand made for damages or rents and profits.

ARTICLE 6.—TRIAL OF ISSUES OF FACT.

§ 51, Jus. C.
am'd. **§ 6681. Issues of fact.** An issue of fact arises:
1. Upon a material allegation in the complaint controverted by the answer, or,

2. Upon new matter in the answer not admitted in the reply; or,

3. Upon new matter in the reply.

§ 53, Jus. C.
am'd. **§ 6682. Issue of fact, how tried.** Issues of fact must be tried by jury unless a jury is waived. When a jury is waived, the court must try the issues, hear the allegations and proofs of the respective parties and render judgment thereon.

§ 55, Jus. C.
am'd. **§ 6683. Trial, commences when.** Subject to the provisions of article 2 of this chapter the trial must commence as soon as the issues are joined or as soon as the jury is impaneled, and continue until concluded without an intermission for more than twenty-four hours at any one time; if either party fails to appear at the time fixed for the trial, it may proceed at the request of the adverse party.

§ 54, Jus. C.
am'd. **§ 6684. Jury, how waived.** A jury is waived:
1. If neither party before the commencement of the trial demands a jury as prescribed in the next section.

2. If either party fails to appear at the time fixed for the trial.

§ 56, Jus. C.
§ 1, c. 33, 1879.
am'd. **§ 6685. Jury, deposit for.** When an issue of fact is joined, either party may demand a trial by jury on depositing with the justice a sum sufficient to pay the jurors their fees for one day's attendance.

§ 56, Jus. C.
§ 1, c. 33, 1879.
am'd. **§ 6686. Jury, how composed.** The jury shall be composed of six residents of the county having the qualifications of jurors or of any number less than six if the parties so agree, who shall be selected, summoned and impaneled as hereinafter prescribed.

§ 56, Jus. C.
§ 1, c. 33, 1879.
am'd. **§ 6687. Jury, how drawn.** Unless the persons to be summoned are named in the agreement of the parties, the justice shall write down the names of eighteen residents of the county competent to sit as jurors, and from the list so prepared, the parties alternately, beginning with the party demanding the jury, shall strike out one name each until there remains only the number required to constitute the jury. If either party refuses to strike out a name the justice shall act for him. The justice shall thereupon issue his venire to the sheriff or any constable of the county commanding him to summon the persons so selected or agreed upon, as the case may be, to appear forthwith or at a fixed time and place stated therein, to serve as jurors in the trial of the action.

§ 6688. Jury, venire how served. The officer shall, without unnecessary delay, serve the venire upon each of the persons therein named by reading the same to him and shall state in his return the name of each person served and the name of each person who cannot be found. A person disobeying a venire may be compelled to appear or be punished for a failure to appear in the same manner as a witness who disobeys a subpoena.

§ 6689. **Talesmen.** If the persons so summoned do not all appear at the proper time, the justice must require the absentees to be brought in or cause others to be substituted or if any person appearing as a juror is excused for legal cause before the jurors are sworn to try the issue, others must be substituted until the required number of jurors is obtained. The persons so required must be selected and summoned forthwith as hereinbefore prescribed from a list containing three times as many names as there are jurors to be substituted. § 57, Jus. C. am'd.

§ 6690. **Jurors, examination of.** Upon the appearance of a sufficient number, the jurors must at the request of either party be first sworn to answer truly all questions that may be propounded to them by the court or by the parties as to their qualifications to sit as jurors in the trial of the action and may thereupon be examined accordingly. § 57, Jus. C. am'd.

§ 6691. **Challenges, how tried.** Challenges to individual jurors are allowed for the same causes as in a civil action in the district court, but must be taken before the jurors are sworn to try the issue, and every challenge must be tried in a summary manner by the justice on the examination of the juror or other witnesses under oath. § 57, Jus. C. am'd.

§ 6692. **Oath of jury.** As soon as a sufficient number are secured and accepted, the justice shall administer to the jurors the following oath: "You, and each of you, do solemnly swear (or affirm as the case may be) that you will well and truly try the matters in issue between the plaintiff and defendant and a true verdict rendered according to the evidence." § 59, Jus. C. am'd.

§ 6693. **Duty of jury.** After the jurors are sworn to try the issue, they must sit together and hear the allegations and proofs of the parties, which must be delivered in public in the presence of the justice and as nearly as may be in accordance with the practice in the district court. § 119, Jus. C. am'd.

§ 6694. **Jury, when discharged.** The jury cannot be discharged after they are sworn until they have agreed upon and returned their verdict, unless for good cause the court sooner discharges them. § 124, Jus. C. am'd.

§ 6695. **Questions of law, how decided.** The justice must decide all questions of law arising in the progress of the trial, but must not instruct the jury upon the law of the case, nor express an opinion as to any matters of fact in controversy therein. § 120, Jus. C. am'd.

§ 6696. **Oath to officer.** After hearing the proofs and allegations, the jury may decide in court or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect:

You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them nor speak to them yourself unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed or when ordered by the court. § 121, Jus. C. am'd.

§ 6697. **Verdict of jury.** The verdict of the jury must be in writing, and be signed by all the jurors or by one of them as foreman. When they have agreed upon their verdict they must render it publicly to the justice and it must be entered in the docket immediately, but if the verdict is not in proper form, the justice may inform the jury accordingly and require them to correct the same. § 122, Jus. C. am'd.

§ 6698. Verdict, form of. The verdict shall be as follows:

1. In an action to recover possession of personal property, to the effect that the jury find the plaintiff or defendant entitled to possession or if not in possession, to a delivery of the property therein described, specifying its value article by article and to damages, if claimed for its detention, in a sum therein stated as assessed by the jury. If the finding is in favor of the plaintiff as to part of the property, the verdict shall contain a like finding in favor of the defendant as to the residue.

2. In an action of forcible detainer when in favor of the plaintiff, to the effect that he is entitled to a delivery of possession and to rents, profits and damages if claimed, in a sum assessed by the jury. If in favor of the defendant a finding to that effect is sufficient.

3. In other actions, when in favor of the plaintiff or plaintiffs to the effect that the jury find for him or them and assess the amount of the recovery at a sum therein stated in dollars and cents; or if there are several defendants, to the effect that the jury find for the plaintiff and assess his recovery at a sum stated as against all or against one or more of the defendants by name as the case requires. When in favor of the defendant or one of several defendants, to the effect that the jury find for him or them designating each by name if necessary, and assessing the amount of his recovery, if determined in his favor, upon a counterclaim.

4. When the plaintiff is entitled to satisfaction of the amount expressed in the verdict out of personal property of the defendant by virtue of a mortgage or other lien, the verdict shall contain a further finding to that effect with a particular description of the property.

§ 125, Jus. C.
am'd.

§ 6699. Proceedings when jury disagree. If the jurors are discharged without rendering a verdict or because they cannot agree, the court shall proceed again to trial as in the first instance until a verdict is rendered.

§ 6700. Motion in arrest of judgment not entertained. No motion in arrest of judgment or to set aside a verdict can be entertained in a justice's court.

ARTICLE 7. — JUDGMENT AND COSTS.

§ 62, Jus. C.

§ 6701. Judgment by confession. Judgments upon confession may be entered in any justice's court specified in the confession.

§ 42, Jus. C.

§ 6702. Judgment by default. When the defendant fails to appear and answer or demur at the time specified in the summons or within one hour thereafter, then upon proof of service of the summons the following proceedings must be had:

1. If the action is based upon a contract and is for the recovery of money or damages only, the court must render judgment in favor of plaintiff for the sum specified in the summons.

2. In all other actions the court must hear the evidence offered by the plaintiff and must render judgment in his favor for such a sum not exceeding the amount stated in the summons, as appears by such evidence to be just.

§ 43, Jus. C.
am'd.

§ 6703. Judgment in certain cases. In the following cases judgment must be rendered in favor of the plaintiff in like manner as upon failure of the defendant to answer or demur:

1. When the complaint has been amended and the defendant fails to answer it as amended within the time allowed by the court.

2. When a demurrer to the complaint has been overruled and the defendant fails to answer forthwith.

3. When a demurrer to the answer has been sustained and the defendant fails to amend the answer within the time allowed by the court.

§ 6704. Judgment affecting personal property. When service of the summons has been made under the provisions of section 6643 of this code and the defendant has not appeared, no money judgment shall be rendered, but the court shall find the amount due and the particular property liable therefor and render judgment for the satisfaction of said amount out of said property by execution.

§ 6705. Judgment of dismissal. Judgment that the action be dismissed without prejudice to another action may be entered with costs to the defendant in the following cases: § 63, Jus. C. am'd.

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the summons or to which the action has been postponed or within one hour thereafter.

3. When a demurrer to the complaint has been sustained and the plaintiff fails to amend within the time allowed by the court.

4. When it appears at the trial that the action is brought in the wrong county.

§ 6706. Judgment, how set aside. The court may relieve either party from a judgment taken against him by reason of his failure to appear or plead or amend. Application for such relief must be made within thirty days after the entry of such judgment upon affidavit showing good cause therefor and after three days' notice to the opposite party. If the application is granted, the court shall set aside the judgment and fix a new day for further proceedings in the action and cause notice thereof to be given to the other party if he is not present at the hearing, which notice may be served either personally or by mail. The court may in its discretion before setting aside the judgment require the applicant to pay the costs of the action which have already accrued.

§ 6707. Judgment, when entered. When a trial by jury has been had, judgment must be entered by the justice at once in conformity with the verdict. § 64, Jus. C.

§ 6708. Judgment by court, when entered. When the trial is by the court, judgment must be entered at the close of the trial. § 65, Jus. C.

§ 6709. Excess of judgment remitted. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be rendered for the residue. § 67, Jus. C.

§ 6710. Judgment in claim and delivery. In actions to recover the possession of personal property the judgment must be entered substantially in the form required by section 5484, code of civil procedure. § 66, Jus. C.

§ 6711. Judgment in attachment. The judgment in an action, in which specific personal property is held liable to the plaintiff's demand by reason of a lien or the levy of an attachment thereon, shall

state what particular property is liable, and why, and the judgment operates as a lien on the property so designated.

§ 39, Jus. C.
§ 1, c. 87, 1881.
am'd.

§ 6712. Judgment in forcible detainer. A judgment in favor of the plaintiff in an action of forcible detainer shall be for delivery of possession to the plaintiff and for the amount of rents and profits and damages found in his favor when claimed by the complaint.

§ 68, Jus. C.
am'd.

§ 6713. Offer of judgment, costs. If the defendant at any time before the trial offers in writing to allow judgment to be taken against him for a specific sum, the plaintiff may upon producing and filing such offer with the justice immediately have judgment therefor with the costs then accrued, but if he does not accept such offer before the trial and fails to recover in the action a sum greater than the offer, he cannot recover costs, but costs must be adjudged against him and if he recovers, be deducted from his recovery. The offer and failure to accept it cannot be given in evidence nor affect the recovery otherwise than as to costs.

§ 69, Jus. C.

§ 6714. Costs taxed. The justice must tax and include in the judgment the costs allowed by law to the prevailing party.

§ 6715. Costs, when not allowed. A party cannot recover as costs any expenses by him incurred for the service of summons or other process by any person not an officer. The party demanding a jury cannot recover any costs thereby incurred:

1. In an action for the recovery of specific personal property when the value of the property which he recovers is less than twenty-five dollars.

2. In any other action if he is the plaintiff and recovers judgment for less than twenty-five dollars exclusive of costs, or if he is the defendant and the sum which he recovers if any exclusive of costs together with the sum demanded by the plaintiff is less than twenty-five dollars. But this subdivision does not apply to an action of forcible detainer.

§ 1, c. 18, 1881.
am'd.

§ 6716. Attorney's fees. When the party entitled to costs has appeared in the action by an attorney duly authorized to practice in the courts of this state, but not otherwise, there shall be allowed for his reimbursement and included in the costs a sum to be ascertained as follows:

1. In an action of forcible detainer, to either party recovering judgment, ten dollars.

2. In any other action, to the plaintiff if he recovers twenty-five dollars or less, a sum equal to twenty per cent of the judgment exclusive of costs; if he recovers more than twenty-five dollars and not more than fifty dollars, five dollars; if he recovers more than fifty dollars, a sum equal to ten per cent of the judgment exclusive of costs; or,

3. The defendant recovering judgment, a sum determined in like manner upon the judgment demanded by the plaintiff.

4. In an action for the recovery of personal property the value of the property as determined in the action shall be deemed part of the judgment recovered or demanded for the purposes of this section.

§ 70, Jus. C.
am'd.

§ 6717. Abstract of judgment. Form. Fee. The justice, on demand of a party recovering judgment and payment of a fee of one dollar, must deliver to him a certified abstract of the judgment to be filed in the district court, if there is outstanding no execution issued thereon. A minute of the delivery of the abstract must be entered in the docket and thereafter no execution shall be issued by

the justice. Such abstract may be in the following form, filling blanks according to the facts:

State of North Dakota, }	In Justice Court,
County of } ss.	Before..... J. P.
C. D., plaintiff,	
vs.	
E. F., defendant.	

Judgment entered (giving date thereof) in favor of plaintiff (or defendant) and against defendant (or plaintiff) for dollars, and costs taxed at dollars, of which dollars remains unsatisfied. I certify that the foregoing is a true and correct abstract of the judgment in said action (as appears upon the docket of said justice now in my custody).

(Date of certificate and official signature of justice.)

ARTICLE 8.—STAY OF EXECUTION.

§ 6718. Stay of execution. Execution upon a judgment for money only may be stayed in the manner hereinafter provided for a period of time from and after the date of the judgment, determined as follows:

1. For two months if the amount of the judgment including costs, does not exceed fifty dollars.
2. For four months if the amount of the judgment including costs, exceeds fifty and does not exceed one hundred dollars.
3. For six months if the amount of the judgment including costs, exceeds one hundred dollars.

But no stay is allowed under the provisions of this section without the consent of the owner and holder of the judgment when it is rendered for wages of a mechanic or laborer or for moneys received in a fiduciary capacity or for breach of any official duty or against a corporation or awards execution against specific personal property.

§ 6719. Stay, how effected. The stay is effected by an undertaking on the part of the judgment defendant entered on the docket of the justice and signed by one or more sufficient sureties of the county having the qualifications of bail in civil actions and justifying thereto to the effect that in consideration of the stay allowed by law, each acknowledges himself indebted to the plaintiff by virtue of the judgment for the amount of the same including costs, and undertakes that payment thereof will be made at or before the expiration of such stay. Such stay operates to suspend the execution of the judgment if executed within ten days after the rendition thereof, but not otherwise.

§ 6720. Stay recalls execution. When a stay is effected, if execution has been issued, the justice must deliver to the judgment debtor an order directing the officer holding the execution to stay all proceedings on the same. On presentation of the order and payment of his fees accrued on the execution the officer must suspend proceedings accordingly, and deliver or relinquish to the debtor all property levied on or money collected under or by virtue thereof; but if his fees are not paid, he may retain so much of the property or money as may be necessary to satisfy the same.

§ 6721. Execution after stay. If the judgment is not satisfied in full at the expiration of the stay, execution shall issue against

the judgment debtor and the surety in said undertaking, describing him as such, with the same effect as though the judgment was against all. The officer receiving the execution shall certify in his return the amount if any collected or received from the surety; and thereupon after five days' notice to the principal debtor the surety may, on motion, have judgment entered by the justice in his favor for the amount so certified against said debtor, unless he files an affidavit stating that he has a valid defense or counterclaim against the surety making the application, but no judgment shall be so entered after the expiration of three months from the return of the execution.

§ 6722. No appeal, when. A party cannot appeal after taking a stay of execution as herein provided.

ARTICLE 9.—EXECUTION.

§ 71, Jus. C.
am'd.

§ 6723. Execution, when issued. The judgment of a justice's court is enforced by process of execution. When the process is not stayed or suspended by any provision of this code, execution may issue at any time within five years after entry of judgment, but not afterwards, on application of the party in whose favor it was rendered or his legal representative to the justice who entered the same or his successor in office, or other justice who has custody of the docket.

§ 6724. Execution for money. No execution shall be issued upon a judgment for the recovery of money until after the expiration of ten days from the time of the entry of judgment, unless there is filed with the justice before the issuance of the execution an affidavit made by the judgment creditor, his agent or attorney, stating that unless an execution is issued before the expiration of such ten days the judgment creditor is in danger of losing the amount of his claim.

§ 72, Jus. C.

§ 6725. Execution, requisites of. The execution must be directed to the sheriff or any constable within the county and must be subscribed by the justice and bear the date of its delivery to the officer. It must intelligibly refer to the judgment, stating the names of the parties thereto, in whose favor, against whom, the time when, the county where and the name of the justice before whom the judgment was rendered; and it must be made returnable to the justice within thirty days after its date.

§ 73, Jus. C.
am'd.

§ 6726. Execution, contents of. An execution issued upon a judgment for a sum of money must state in the body thereof the sum actually due on the judgment and must substantially require the officer to satisfy the same, together with interest and costs out of the personal property of the debtor, and bring the money before the justice by the return day of the execution.

§ 6727. Execution against exempt property. When judgment is rendered for any cause appearing therein upon which the exemptions allowed by law are expressly restricted or prohibited, the execution shall state the facts accordingly; and when the judgment designates personal property specifically liable thereto, the execution shall contain a description of such property.

§ 74, Jus. C.
am'd.

§ 6728. Execution for personal property. An execution issued upon a judgment for the delivery of the possession of personal property shall substantially require the officer to deliver the possession of the same particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any

costs or damages recovered by the judgment out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified therein, if a delivery cannot be had.

§ 6729. **Execution in forcible detainer.** An execution issued upon a judgment in favor of the plaintiff in an action of forcible detainer shall substantially require the officer to deliver possession of the premises, particularly describing them, to the plaintiff, and may at the same time require the officer to satisfy the money judgment and costs as in other cases. The process must be executed as respects the delivery of possession only in the day time. § 75, Jus. C. am'd.

§ 6730. **Execution for specific property.** An execution, which describes the specific personal property liable for the satisfaction of the judgment, may be levied on other property of the debtor not exempt, when for any cause it appears that full satisfaction cannot be obtained from the property so described.

§ 6731. **Sale of personal property under execution.** The provisions of chapter 11 of the code of civil procedure, relating to the levy and sale or delivery of personal property so far as the same are applicable and not inconsistent with the provisions of this chapter, apply to and govern the levy, sale and delivery of personal property under an execution issued by a justice of the peace. And the constable when the execution is directed to him is vested for that purpose with all the powers of the sheriff; provided, that notice shall not be published in a newspaper but shall be given by posting for ten days in five public places within the county, one of which shall be at the office of the justice issuing the execution. § 77, Jus. C.

§ 6732. **Renewal of execution.** An execution may at the request of the judgment creditor be renewed before the expiration of the time fixed for its return by the word "renewed" written thereon, with the date thereof and subscribed by the justice. Such renewal has the effect of an original issue and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued. § 76, Jus. C.

§ 6733. **Justice receives money collected.** A justice of the peace must receive all moneys collected by the sheriff, constable or other officer upon any process or order issued from his court and must pay the same over to the parties or persons entitled thereto without delay.

CHAPTER 4.

CONTEMPTS IN JUSTICES' COURTS.

§ 6734. **Contempts, acts constituting.** A justice may punish as for contempt, persons guilty of the following acts and no other: § 78, Jus. C.

1. Disorderly, contemptuous or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding.

2. A breach of the peace, boisterous conduct or violent disturbance in the presence of the justice or in the immediate vicinity of the

court held by him, tending to interrupt the due course of a trial or other judicial proceeding.

3. Disobedience or resistance to the execution of a lawful order or process made or issued by him.

4. Disobedience to a subpoena duly served or refusing to be sworn or to answer as a witness.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

§ 80, Jus. C.
am'd.

§ 6735. Trial for contempt. When the act or omission is not committed in the immediate view and presence of the justice, an affidavit alleging the facts may be filed and a warrant of arrest may thereupon issue on which the person accused may be arrested and brought before the justice immediately, when he must be given a reasonable opportunity to employ counsel and excuse or defend against the alleged contempt and after hearing the allegations and proofs the justice may discharge him or adjudge him guilty and direct that he be punished accordingly.

§ 81, Jus. C.

§ 6736. Punishment for contempt. A justice may punish for contempts by fine or imprisonment or both; such fine not to exceed in any case, one hundred dollars, and such imprisonment, one day.

§ 82, Jus. C.
am'd.

§ 6737. Conviction, entered on docket. The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

CHAPTER 5.

PROCEDURE IN CRIMINAL ACTIONS.

§ 104, Jus. C.
am'd.

§ 6738. Criminal action, how prosecuted. A criminal action, which a justice's court is empowered to hear, try and determine, may be prosecuted in pursuance of the provisions of this chapter upon a complaint entered before any justice of the peace of the county in which the offense is laid.

§ 109, Jus. C.
am'd.

§ 6739. Proceedings entered on docket. All proceedings in the action must be entered by the justice in his docket as nearly as may be in the manner and form prescribed in a civil action with the modifications prescribed by this chapter.

§ 106, Jus. C.
am'd.

§ 6740. Complaint. The complaint must be in writing and must state the facts constituting the offense in ordinary and concise language with sufficient certainty and with such particulars of time, place, person and property as will enable a person of common understanding to know what is intended and authorize the court to pronounce judgment.

§ 107, Jus. C.
am'd.

§ 6741. Complaint, sworn to. The complaint must be sworn to before the justice, who may, if he deems proper, examine the complainant or other persons under oath concerning the grounds of the accusation; and if the justice is satisfied that sufficient grounds exist for the prosecution, he shall issue a warrant for the arrest of the defendant.

§ 6742. **Complaint, form of.** A complaint may be substantially in the following form: State of North Dakota, county of (naming it), in justice court, before (name of justice.) The state of North Dakota against (name of accused.) Complaint. (Name of complainant), being first duly sworn, says that on the (time of offense), at said county, the above named defendant did (here state the offense), against the peace and dignity of the state of North Dakota. Wherefore complainant prays that said defendant may be arrested and dealt with according to law. (Signature of complainant.) Subscribed and sworn to before me (giving date.) (Official signature of the justice.)

§ 6743. **Warrant, form of.** A warrant may be substantially in the following form, filling blanks according to the facts: The state of North Dakota to the sheriff or any constable of county. Complaint upon oath having been made before me (name of justice), a justice of the peace of said county, by (name of complainant), accusing (name of defendant) of the commission of a public offense, to-wit: (here designate the offense by name or general description); you are therefore commanded to arrest said (name of defendant) forthwith, and bring him before me at (stating the place), there to be dealt with according to law. Witness my hand this day of, 18... (Official signature of the justice.)

§ 107, Jus. C.
am'd.

§ 6744. **Duty of officer.** An officer who receives a warrant must execute the same with diligence by taking the defendant into his custody and bringing him without unnecessary delay before the justice who issued the same.

§ 6745. **Warrant, how served.** The warrant may be served in any other county in the manner prescribed by articles 5 and 6 of chapter 6 of the code of criminal procedure.

§ 108, Jus. C.
am'd.

§ 6746. **Counsel for defendant.** When the defendant is brought before the justice, he must be allowed a reasonable time and opportunity to procure counsel.

§ 6747. **Postponement of trial.** A reasonable postponement of the hearing or trial may also be ordered at any time to enable the complainant or defendant to procure the attendance or testimony of a witness or for any other good cause.

§ 114, Jus. C.
am'd.

§ 6748. **Bail.** The defendant at any time before conviction may be admitted to bail by giving an undertaking with sufficient surety in an amount to be fixed by the justice for his appearance before the justice to answer the complaint.

§ 134, Jus. C.
am'd.

§ 6749. **Change of venue.** When the defendant before the trial commences files an affidavit in writing, stating that he has reason to believe and does believe that he cannot have a fair and impartial trial of the action before the justice about to try the same by reason of the bias or prejudice of said justice, the action must be transferred to a justice of the county agreed upon by or in behalf of the parties, or if there is no such agreement, to the next nearest justice within the county and an order must be made transferring the same accordingly. But the place of trial cannot be changed more than once under the provisions of this section.

§ 1, c. 82, 1887.
§ 1, c. 81, 1891.
am'd.

§ 6750. **Duty of justice when venue changed.** When a change of the place of trial is ordered, the justice must forthwith attach to the original papers a certified copy of his docket entries in

§ 113, Jus. C.
am'd.

the action and deliver the same to an officer, who must execute the order without delay by taking the defendant before the justice named and delivering to him the papers so received.

§ 113, Jus. C.
am'd.

§ 6751. **Jurisdiction of justice.** The justice to whom the action is transferred as provided in the last section, must proceed with the trial in the same manner as in an action originally commenced before him.

§ 6752. **Complaint to be read.** Before the trial commences the complaint must be distinctly read to the defendant and he must be asked if he is designated therein by his right name and be required to plead.

§ 6753. **Name of defendant.** If the defendant objects that he is wrongly named in the complaint and gives his right name, the proceedings shall be amended accordingly. If he does not give his right name, he is thereafter precluded from making any objections on the grounds that he is not designated by his right name.

§ 110, Jus. C.
am'd.

§ 6754. **Plea, oral and entered on docket.** The defendant may make the same pleas as to an information or indictment. His plea may be oral and must be entered in the docket. If he refuses to plead, a plea of "not guilty" must be entered.

§ 110, Jus. C.
am'd.

§ 6755. **Plea of guilty. Duty of justice.** If the defendant pleads guilty, the court before accepting the plea may examine witnesses to ascertain the gravity of the offense; and if it appears from the testimony that the offense committed is of a higher grade than that charged in the complaint, the court may refuse to accept the plea and direct a complaint to be filed charging the offense accordingly and proceed with a preliminary examination of the defendant as prescribed in the code of criminal procedure.

§ 111, Jus. C.
am'd.

§ 6756. **Issue, when tried.** When the defendant makes any plea other than a plea of guilty, the issue shall be tried by the court unless a jury is demanded; but if either party demands a jury before the court hears any testimony, the issue must be tried by a jury of twelve persons.

§ 116, Jus. C.
am'd.

§ 6757. **Jury, how formed.** The provisions of article 6 of chapter 3 of this code apply to the formation of the jury and the conduct of the trial except as otherwise prescribed by this chapter.

§ 117, Jus. C.
am'd.

§ 6758. **Challenges.** Challenges may be taken by either party to individual jurors for the same causes as on a trial in the district court for a criminal offense.

§ 118, Jus. C.
am'd.

§ 6759. **Oath to jury.** The court must administer to the jury the following oath: You do swear (or affirm) that you will well and truly try this issue between the state of North Dakota and A. B., the defendant, and a true verdict render according to the evidence. So help you God.

§ 115, Jus. C.

§ 6760. **Defendant present.** The defendant must be personally present during the progress of the trial.

§ 122, Jus. C.
am'd.

§ 6761. **Verdict of jury.** The verdict of the jury on a plea of not guilty must be to the effect that the jury find the defendant "guilty," or "not guilty," as the case may be. On any other plea the verdict must be "for the state," or "for the defendant."

§ 123, Jus. C.
am'd.

§ 6762. **Verdict, when several defendants.** When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

§ 6763. **Verdict entered.** When the verdict is received the court must immediately render judgment thereon and enter the same in the docket. § 129, Jus. C. am'd.

§ 6764. **Defendant discharged.** When the defendant is acquitted by the court or by a verdict of "not guilty" or, "for the defendant," a judgment of acquittal must be rendered and if the defendant is not detained on legal process for any other cause, he must be immediately discharged. §§ 128, 130, Jus. C. am'd.

§ 6765. **Conviction of defendant, judgment.** When the defendant is convicted by the court or by a verdict of "guilty" or a verdict "for the state" which does not also find the defendant not guilty, the court shall render judgment that he be punished by a fine or by imprisonment in the county jail or by both fine and imprisonment, specifying the amount of the fine or time of imprisonment. A judgment of fine only may also direct that the defendant be imprisoned until the same is satisfied. In a case in which the court has a discretion as to the extent of the punishment, it may, upon the suggestion of either party before rendering judgment, hear testimony as to circumstances proper to be considered in aggravation or mitigation of punishment. § 126, Jus. C.

§ 6766. **Right of appeal.** If the defendant is convicted, the justice when he renders judgment must inform him of his right to appeal and prescribe the amount in which he may give bail for his appearance in the district court in case of an appeal.

§ 6767. **Judgment, how enforced.** A judgment, which imposes a fine without directing that the defendant be imprisoned until the same is satisfied, may be enforced in the same manner as a judgment in a civil action and execution shall issue accordingly at the request of the state's attorney. § 127, Jus. C. am'd.

§ 6768. **Judgment of imprisonment.** A judgment of imprisonment must be executed by delivering the defendant into the custody of the sheriff or other officer in charge of the county jail, who shall safely keep him therein until the expiration of the time specified in the judgment charged. A judgment of fine which directs that the defendant be imprisoned until the fine is paid must be executed in like manner except that the time of imprisonment shall be at the rate of one day for each two dollars of the fine and the defendant must be discharged on payment of the fine. § 132, Jus. C. am'd.

§ 6769. **Certified copy of judgment.** A copy of the judgment duly certified by the justice is a sufficient warrant for the doing of every act necessary or proper in the due execution thereof as prescribed in the preceding section by an officer receiving the same. The officer shall upon discharging the defendant return such copy to the justice with an account of his doings indorsed thereon and must at the same time pay over to the justice all money which he may have received from the defendant in payment of the fine. § 131, Jus. C. am'd.

§ 6770. **Fines paid. Duty of justice.** When the fine is paid, the justice must apply the money in payment of the legal costs and expenses of the prosecution and pay over the residue if any to the county treasurer. § 133, Jus. C. § 2, c. 111, 1885. am'd.

CHAPTER 6.

APPEALS.

ARTICLE 1.—APPEALS IN CIVIL ACTIONS.

§ 6771. **Appeals to district court.** Any party dissatisfied with a judgment rendered in a civil action in a justice's court whether the same was rendered on default or after a trial, may appeal therefrom to the district court of the county or subdivision at any time within thirty days after the rendition of the judgment. The appeal is taken by serving the notice of appeal on the adverse party or his attorney and by filing the notice of appeal together with the undertaking required by law with the clerk of the district court of the county to which the appeal is taken.

§ 6772. **Undertaking on appeal.** To render an appeal effectual for any purpose, an undertaking must be executed on the part of the appellant by sufficient surety to the effect that the appellant will pay all costs which may be awarded against him on the appeal not exceeding one hundred dollars, which undertaking shall be approved by and filed in the office of the clerk of the district court of the county to which the appeal is taken.

§ 6773. **Stay of execution on appeal.** If the appellant desires a stay of execution an undertaking must be executed on his part by sufficient surety to the effect, that if the appeal is dismissed, the appellant will pay the amount of the judgment appealed from and all costs or if judgment is rendered against him in the appellate court, that he will pay the amount of such judgment and all costs not exceeding a sum specified in the undertaking, which must be at least one hundred dollars and not less than twice the amount of the judgment appealed from; or, if the judgment appealed from is for the recovery of specific personal property, an undertaking must be executed on the part of the appellant by sufficient surety to the effect that if the appeal is dismissed or if judgment is rendered against the appellant in the appellate court, the appellant will deliver the property described in the judgment and pay the damages awarded for the taking or detention thereof and all costs or pay the sum fixed by the judgment as the value of the property together with the damages awarded for the taking or detention thereof and all costs. Such undertaking shall be approved and filed as provided in the last section.

§ 6774. **Stay in forcible detainer.** In judgments for the delivery of possession in actions of forcible detainer the execution of the same shall not be stayed, unless a written undertaking is executed on the part of the appellant with sufficient surety to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon and that if the appeal is dismissed or judgment is rendered against the appellant in the appellate court, he will pay all rents for the use and occupation of the property and all damages from the time of the appeal until the delivery of the possession thereof. Such undertaking is in addition to the undertaking provided for in the last section and shall be approved and filed in the manner provided in section 6772.

§ 6775. Money in lieu of undertaking. When the appellant is required under any provision of this article to give an undertaking, he may in lieu thereof deposit with the clerk of the district court in whose office the notice of appeal is required to be filed, who shall give a receipt therefor, a sum of money equal to the amount for which such undertaking is required to be given and in lieu of the service of such undertaking serve a notice of the making of such deposit. Such deposit and notice shall have the same effect as the service of the required undertaking and be held to answer the event of the appeal upon the terms prescribed for the undertaking in lieu of which the same is deposited.

§ 6776. Sufficiency of sureties excepted to. The undertaking given on appeal and appellant's pleading, if the judgment appealed from was taken by default, must be served with the notice of appeal. The adverse party may except to the sufficiency of the surety upon any undertaking on appeal within five days after its service upon him. Thereupon the surety must justify upon like notice and in like manner as bail upon an arrest; or a new undertaking must be given with new surety and thereupon the same proceedings may be had as upon the original undertaking. Unless such surety justifies or a new undertaking with new surety is given and justifies, if required, the appeal must on motion of the respondent be dismissed; but the liability of the surety upon any undertaking given on appeal shall not be thereby released.

§ 6777. Appeal filed with clerk. Proceedings on. Upon the filing of the notice of appeal and undertaking, or the making of the deposit prescribed in section 6775 in the office of the clerk of the district court, such clerk shall immediately mail to the justice of the court in which the judgment appealed from was rendered a written notice thereof, specifying the court in which the judgment was rendered, the names of the parties, the date and amount of the judgment appealed from and stating whether the undertaking filed or deposit made entitles the appellant to a stay of execution and requiring such justice to transmit to such clerk the record required by law. Such justice must within ten days after the receipt of such notice transmit to the clerk of the district court a record which shall contain a certified copy of the justice's docket, the pleadings, all notices, motions and other papers filed in the cause. The justice may be compelled by the district court by order entered upon motion to transmit such record and may be fined for neglect or refusal so to do. A certified copy of such order may be served on the justice by the party or his attorney.

§ 6778. Execution stayed by appeal. If an execution has been issued, the justice must, if the written notice received from the clerk states that the undertaking filed or deposit made entitles the appellant to a stay of execution, by order direct a stay of all proceedings on the same. The officer in whose hands such execution may be must upon payment of his fees for services rendered upon the execution relinquish all property levied upon and deliver the same to the judgment debtor together with all moneys collected from sales or otherwise. If his fees are not paid the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

§ 6779. Action tried in district court. The action shall be tried anew in the district court in the same manner as actions originally commenced therein. No notice of trial and note of issue shall

be required to be served or filed in order to bring the case upon the trial calendar in the district court but the record of such appeal shall be filed by the clerk of the district court and the action entered upon the calendar.

§ 6780. Appeal dismissed, proceedings. When an appeal to the district court is dismissed and no appeal is taken to the supreme court from the judgment for costs rendered in the district court upon the dismissal thereof, a certified copy of the order dismissing the same shall be filed in the justice's court in which the judgment was rendered and thereafter the judgment appealed from shall have the same force and validity, and may be enforced in the same manner as if no appeal had been taken. In case an appeal is taken to the supreme court after a certified copy of the order aforesaid is filed in the justice's court, the judgment therein shall be suspended until the further order of the district court.

ARTICLE 2. — APPEALS IN CRIMINAL ACTIONS.

§ 6781. Appeal. Time. Bond. A defendant in a criminal action may appeal from the judgment of a justice of the peace at any time within thirty days by giving notice of the appeal and giving bail for his appearance in the district court as prescribed in this article.

§ 6782. Appeals as in civil actions. The notice may be given by stating orally to the justice at the time of rendering judgment that the defendant appeals, or by filing with the justice a written notice of appeal and serving a copy thereof on the state's attorney of the county within the prescribed time.

§ 6783. Bond required. Bail must be given in the sum fixed by the justice to the effect that the defendant shall appear in the district court on the first day of the next term convening within the county there to answer the complaint and abide the further orders of the court. Such bail may be given by the written undertaking of one or more sufficient sureties approved by the justice or by a deposit of money in lieu of sureties.

§ 6784. Approval of bond. If the justice refuses to approve the undertaking, it may be approved by the clerk of the district court and filed with the justice with the same effect as if approved by him.

§ 6785. Witnesses placed under bond. When an appeal is taken, the justice must, if application is made by the state's attorney, cause all material witnesses on behalf of the prosecution to enter into an undertaking in like manner as in a case when a defendant is held to answer on a preliminary examination.

§ 6786. Justice transmits appeal. The justice must within five days after an appeal is taken transmit to the clerk of the district court a certified copy of his docket and all papers relating to the case as on appeal in a civil action, and may be compelled to do so or make a further return in like manner. If money has been deposited in lieu of bail it must accompany the return.

§ 6787. Appeal. New trials. Proceedings. An appeal duly perfected transfers the action to the district court for trial anew regardless of any ruling or decision of the justice. But the defendant may move to dismiss the complaint on the ground that the justice did not have jurisdiction of the offense. He may also demur to the complaint because more than one offense is charged therein or be-

cause the facts stated do not constitute a public offense. If he does not object to the complaint for the causes above specified or if his objections are overruled he must be required to plead as to an indictment or information without regard to any plea entered before the justice. In other respects the proceedings shall be the same as in criminal actions originally commenced in the district court and judgment shall be rendered and carried into effect accordingly.

§ 6788. **Appeal not dismissed.** No appeal from the judgment of a justice of the peace in a criminal action shall be dismissed. But if the appeal was not taken in time or if the defendant fails to appear in the district court when his presence is required, the judgment of the justice shall be summarily affirmed and entered as the judgment of the district court and carried into effect as such.

§ 142, Jus. C.
am'd.

CHAPTER 7.

ACCOUNTING BY JUSTICES OF THE PEACE.

§ 6789. **Quarterly reports by justice.** Every justice of the peace shall, on the first Monday of January, April, July and October in each year, make to the county commissioners of his county a full report under oath of all his doings in actions or proceedings in which the county or state is a party or is in any manner interested.

§ 1, c. 3, Jus. C.
am'd.

§ 6790. **Contents of report.** Such report shall contain the names of the parties to each action or proceeding and a statement of the final order or judgment of the justice therein and of all orders relating to costs, an itemized statement of all fees taxed or allowed as costs in each action or proceeding and the names of the persons or officers entitled thereto, including all costs of the prosecution or defense in a criminal proceeding which are payable by the county, also a statement of each payment made on such judgment and the disposition thereof made by the justice.

§ 2, c. 3, Jus. C.
am'd.

§ 6791. **Pay moneys to county treasurer.** Each justice of the peace shall at the time of making his report pay over to the county treasurer of his county all fines or other moneys collected or received by him in behalf of the county or state and remaining in his hands, but whenever the amount of money so collected and received exceeds one hundred dollars, he must pay the same over to the treasurer forthwith.

§ 3, c. 3, Jus. C.
am'd.

§ 6792. **Penalty for failure.** Any justice of the peace violating any of the provisions of this act shall be liable to a fine of not less than ten nor more than one hundred dollars to be recovered in a civil action by the county.

§ 4, c. 3, Jus. C.
am'd.

§ 6793. **Violation, a crime.** If any justice of the peace shall neglect or refuse to make such report or neglect or refuse to pay over the aforesaid moneys collected by him, or shall refuse to allow the county commissioners or any of them to examine the records in regard to such matters, he shall be deemed guilty of willful and corrupt misconduct in office.

§ 5, c. 3, Jus. C.
am'd.

CHAPTER 8.

BOARDS OF CONCILIATION.

MODE OF PROCEDURE.

§ 1, c. 22, 1895. **§ 6794. Election of commissioners.** There shall be elected at the same time and in the same manner as the justices of the peace in each town, incorporated village and city by the qualified voters thereof four commissioners of conciliation whose term of office shall be two years and until their successors are duly elected and qualified.

§ 1, c. 22, 1895. **§ 6795. Term of office.** The time of commencement of their term of office shall be the same as that prescribed for justices of the peace.

§ 2, c. 22, 1895. **§ 6796. Proceedings before commissioners.** At the time of issuing the summons in any civil action begun before a justice of the peace or at any time afterwards before the return day of such summons and only on the request of either party and by the consent of both parties in said action, the justice shall issue a subpoena summoning two of the commissioners of conciliation elected for the town, village or city where the action is brought and the defendant or the plaintiff as the case may require, to appear before him at some time prior to the hour designated in the summons, which subpoena shall be served in the same manner as a summons is required to be served in actions in the district court and may be served by the party obtaining it issued and at any time before its return day. If either party fails to appear at the time designated in the subpoena it shall be so certified to the justice of the peace by the commissioners before the return hour of the summons in said action. If both parties appear they shall then go before the two commissioners summoned, as aforesaid, and state their differences, which statements or so much thereof as is necessary to show the issue between the parties, shall be reduced to writing and shall constitute the pleadings in the case. The parties may then introduce evidence in the order and under the restrictions prescribed by the commissioners and it shall be discretionary with the commissioners whether or not the witness shall be sworn before testifying, and if so required, one of the commissioners may administer the oath. After hearing all the evidence offered it shall be the duty of the commissioners to the best of their ability to persuade the parties to agree to an amicable settlement of their differences on such terms as to them appear just and equitable. If an agreement is reached it shall be reduced to writing, signed by the parties, certified to the justice, by him entered on his docket of the case and shall then be a judgment of the court of said justice therein.

§ 2, c. 22, 1895. **§ 6797. Agreement, parties, attorneys.** No agreement shall be entered unless it can be put in the form of a judgment now authorized by law to be entered by justices of the peace. At the hearing before the commissioners each party must appear in person except in the case of nonresident parties or for cause, when a party may appear by an agent duly authorized in writing. No attorney except as such agent, nor the justice of the peace before whom the action is pending shall be allowed to appear or in any way act in the hearing before the commissioners. If at such hearing the parties fail to agree, it shall

be so certified to the justice before the return hour of the summons, who may then proceed to trial and judgment as though no such hearing had been had therein and the parties may be allowed to file amended pleadings.

§ 6798. Compensation of commissioners. The commissioners shall receive the same mileage and per diem as jurors in justices courts. All fees and costs shall be included in the settlement and paid by the party designated therein, but in cases when the parties thereto fail to agree the costs shall be paid jointly by both parties unless otherwise agreed to. If a commissioner disobeys the subpoena of the justice, he shall be proceeded against in the same manner as a juror who fails to appear when summoned by him. § 3, c. 22, 1895.

§ 6799. Proceedings not evidence at subsequent trial. No part of the proceedings had before the commissioners shall be admitted as evidence or considered at the trial of the case before the justice, nor shall any of the commissioners who took part in such hearing before them be allowed to testify therein. § 4, c. 22, 1895.

PENAL CODE.

CHAPTER 1.

PRELIMINARY PROVISIONS.

§ 6800. **Title.** This act shall be known as the penal code of the state of North Dakota. § 1. Pen. C.

§ 6801. **What acts criminal. Under what law punishable.** No act or omission begun after the beginning of the day on which this code takes effect as a law shall be deemed criminal or punishable except as prescribed or authorized by this code or other statutes of this state, or by some of the statutes which this code specifies as continuing in force and as not affected by its provisions, or by some ordinance or municipal, county or township regulation passed or adopted under any such statutes. Any act or omission begun prior to the beginning of the day on which this code takes effect as a law, may be inquired of, prosecuted and punished in the same manner as if this code had not been enacted. § 2. Pen. C. am'd.

§ 6802. **Crime defined. Punishments enumerated.** A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: § 3. Pen. C. am'd.

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office.
5. Disqualification to hold or enjoy any office of honor, trust or profit under this state.
6. Other penal discipline.

§ 6803. **Crimes, how divided.** Crimes are divided into: § 4. Pen. C.

1. Felonies.
2. Misdemeanors.

§ 6804. **Felony and misdemeanor defined.** A felony is a crime which is or may be punishable with death or imprisonment in the penitentiary; every other crime is a misdemeanor. When a crime punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in a county jail, in the discretion of the court or jury, it is, except when otherwise specially declared by law § 5, 6. Pen. C. am'd.

to be a felony, a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary.

§ 7. Pen. C.
am'd.

§ 6805. **Scope of penal code.** This code specifies the classes of persons who are deemed capable of crimes and liable to punishment therefor; and defines the nature of the various crimes, and prescribes the kind and measure of punishment to be inflicted for each. The manner of prosecuting and convicting criminals is regulated by the provisions of this code and the code of criminal procedure.

§ 8. Pen. C.

§ 6806. **Conviction before punishment.** The punishments prescribed by this code can be inflicted only upon a legal conviction in a court having jurisdiction.

§ 9. Pen. C.

§ 6807. **Jury find degree of crime.** Whenever a crime is distinguished into degrees, the jury, if they convict the prisoner, shall find the degree of the crime of which he is guilty.

§ 10. Pen. C.

§ 6808. **Rule of construction.** The rule of the common law that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice.

§ 11. Pen. C.
am'd.

§ 6809. **Duty of court to determine punishment. Exception.** Except as limited in cases where the jury is authorized to determine the punishment, the several sections of this code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

§ 12. Pen. C.
am'd.

§ 6810. **Jury when authorized, otherwise court determines limit.** Whenever in this code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the jury, when so authorized, or by the court authorized to pass sentence, within such limits as may be prescribed by this code.

§ 13. Pen. C.
am'd.

§ 6811. **Punishments of felonies. Natural persons. Corporations.** Except in cases where a different punishment is prescribed by this code or by some existing provision of law, every offense declared to be a felony is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not less than one and not exceeding five years, or by both such fine and imprisonment. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable as for a felony, and there is no other punishment prescribed by law, such corporation is punishable by a fine of not less than five hundred and not exceeding five thousand dollars.

§ 14. Pen. C.
am'd.

§ 6812. **Misdemeanors.** Except in cases where a different punishment is prescribed by this code or by some existing provisions of law, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER 2.

PERSONS LIABLE TO PUNISHMENT FOR CRIME.

§ 6813. **Persons liable to punishment.** The following persons are liable to punishment under the laws of this state: § 15, Pen. C. am'd.

1. All persons who commit, in whole or in part, any crime within this state.

2. All persons who commit larceny or robbery as defined in this code, out of this state and bring to, or are found with the property stolen within this state.

3. All persons who, being out of this state, abduct or kidnap, by force or fraud, any person, contrary to the laws of the place where such act is committed, and bring, send or convey such person within the limits of this state, and are afterwards found therein.

4. All persons who, being out of this state, cause or aid, advise or encourage another person to commit a crime within this state, and are afterwards found therein.

5. All persons who, being out of this state and with intent to cause within it a result contrary to the laws of this state, do an act which, in its natural and usual course, results in an act or effect contrary to its laws.

§ 6814. **Who capable of crime. Exception.** All persons are capable of committing crime, except those belonging to the following classes: § 16, Pen. C. am'd.

1. Children under the age of seven years.

2. Children over the age of seven years but under the age of fourteen years, in the absence of clear proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.

3. Idiots.

4. Lunatics, insane persons and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.

5. Persons who commit an act or make an omission, otherwise criminal or punishable, through misfortune or by accident, or under an ignorance or mistake of fact, which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

6. Persons who commit an act or make an omission, otherwise criminal or punishable, without being conscious thereof.

7. Persons who commit an act or make an omission, otherwise criminal or punishable, while under involuntary subjection to the power of superiors.

§ 6815. **Intoxication, how considered. Effect on intent.** § 17, Pen. C. am'd.

No act committed by a person while in a state of voluntary intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent, is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent, with which he committed the act.

- § 18. Pen. C. **§ 6816. Morbid propensity, no defense.** A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.
- § 19. Pen. C. **§ 6817. Acquitted for insanity. Court may commit.** When a jury has returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public safety, order him to be committed to the state hospital for the insane, or to the care of such person or persons as the court may direct till he becomes sane.
- § 20. Pen. C. **§ 6818. Superior power exonerates. Duress. Coverture.** The involuntary subjection to the power of a superior which exonerates a person charged with a criminal act or omission from punishment therefor, arises either from:
1. Duress; or,
 2. Coverture.
21. Pen. C. **§ 6819. What superior power excuses.** The duress which excuses a person from punishment who has committed a prohibited act or omission must be an actual compulsion by use of force or fear.
- § 22. Pen. C. **§ 6820. Superior power inferred. Exceptions.** A subjection sufficient to excuse from punishment may be inferred in favor of a wife, from the fact of coverture, whenever she committed the act charged in the presence and with the assent of her husband, except when such act is a participation in:
1. Treason.
 2. Murder.
 3. Manslaughter.
 4. Maiming.
 5. An attempt to kill.
 6. Rape.
 7. Abduction.
 8. Abuse of children.
 9. Seduction.
 10. Abortion, either upon herself or another female.
 11. Concealing the death of an infant, whether her own or that of another.
 12. Fraudulently producing a false child, whether as her own or that of another.
 13. Bigamy.
 14. Incest.
 15. The crime against nature or sodomy.
 16. Indecent exposure.
 17. Obscene exhibitions of books and prints.
 18. Keeping a bawdy or other disorderly house.
 19. Misplacing a railway switch; or,
 20. Obstructing a railway track.
- § 23. Pen. C. **§ 6821. Duress. When not inferred.** In case of the crimes enumerated in the last section, the wife is not excused from punishment by reason of her subjection to the power of her husband, unless the facts proved show a case of duress as defined in section 6819.
- § 24. Pen. C. **§ 6822. Inference from coverture, may be rebutted.** The inference of subjection arising from the fact of coverture may be rebutted by any facts showing that in committing the act charged the wife acted freely.

§ 6823. **Public ministers exempt.** Embassadors and other public ministers from foreign governments accredited to the president or the government of the United States, and recognized by it according to the laws of the United States, with their secretaries, messengers, families and servants are not liable to punishment in this state. § 25, Pen. C. am'd.

CHAPTER 3.

PARTIES TO CRIME.

§ 6824. **Parties to crime classified.** The parties to crime are classified as: § 26, Pen. C.

1. Principals; and,
2. Accessories.

§ 6825. **Principals, who are.** All persons concerned in the commission of a crime, whether it is a felony or a misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, and all persons counseling, advising or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who by fraud, contrivance or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who by threats, menaces, command or coercion, compel another to commit any crime, are principals in any crime so committed. § 27, Pen. C. am'd.

§ 6826. **Accessories, who are.** All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction or punishment, are accessories. § 28, Pen. C.

§ 6827. **Misdemeanors. No accessories.** In misdemeanor there are no accessories. § 29, Pen. C.

§ 6828. **Accessories, how punished.** Except in cases when a different punishment is prescribed by law, an accessory to a felony is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. § 30, Pen. C. am'd.

CHAPTER 4.

CRIMES AGAINST RELIGION AND CONSCIENCE.

- § 31. Pen. C. **§ 6829. Blasphemy defined.** Blasphemy consists in wantonly uttering or publishing words, casting contumelious reproach or profane ridicule upon God, Jesus Christ, the Holy Ghost, the holy scriptures, or the christian religion.
- § 32. Pen. C. **§ 6830. Serious discussion not blasphemy.** If it appears beyond reasonable doubt that the words complained of were used in the course of serious discussion, and with intent to make known or recommend opinions entertained by the accused, such words are not blasphemy.
- § 33. Pen. C. **§ 6831. Misdemeanor.** Blasphemy is a misdemeanor.
- § 34. Pen. C. **§ 6832. Profane swearing defined.** Profane swearing consists in any use of the name of God, or Jesus Christ, or the Holy Ghost, either in imprecating divine vengeance upon the utterer or any other person, or in light, trifling or irreverent speech.
- § 35. Pen. C. **§ 6833. Punishment of.** Every person guilty of profane swearing is punishable by a fine of one dollar for each offense.
- § 36. Pen. C. **§ 6834. Summary conviction for.** Whenever any profane swearing is committed in the presence and hearing of any justice of the peace or other magistrate, while holding a court, or under any other circumstances such as in the opinion of the magistrate amount to a gross violation of public decency, such magistrate may, in his discretion, immediately convict the offender, without any other proof.
- § 37. Pen. C. **§ 6835. Penalties, how collected. Commitment for.** If the offender does not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the county jail for every offense, or for any number of offenses whereof he was convicted at one and the same time, for not less than one nor more than three days; there to be confined in a room separate from all other prisoners.
- § 1 c. 87, 1883.
am'd. **§ 6836. Obscene language. Public place.** Any person who shall utter or speak any obscene or lascivious language or words, in any public place, or in the presence of females, or of children under ten years of age, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of this state, or before a county court exercising increased jurisdiction, as provided in section 111 of the constitution of this state, shall be liable to a fine of not more than one hundred dollars, or imprisonment in the county jail not more than thirty days, or both, at the discretion of the court.
- § 38. Pen. C. **§ 6837. First day of week. Acts prohibited.** The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified.
- § 39. Pen. C. **§ 6838. Sabbath breaking defined.** Any violation of the foregoing prohibition is Sabbath breaking.
- § 40. Pen. C. **§ 6839. Day defined.** Under the term "day," as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.
- § 41. Pen. C.
am'd. **§ 6840. Acts of Sabbath breaking enumerated.** The following are the acts forbidden to be done on the first day of the week, the doing of any of which is Sabbath breaking:

1. Servile labor.
2. Public sports.
3. Trades, manufactures and mechanical employments.
4. Public traffic.
5. Serving process.

§ 6841. **Servile labor prohibited.** All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity. § 42, Pen. C.

§ 6842. **Defense, other day observed.** It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time. § 44, Pen. C.

§ 6843. **Prohibited sports enumerated.** All shooting, sporting, horse racing, gaming or other public sports, upon the first day of the week, are prohibited. § 45, Pen. C.

§ 6844. **Trades and employments prohibited.** All trades, manufactures and mechanical employments, upon the first day of the week, are prohibited. § 46, Pen. C.

§ 6845. **Public traffic prohibited.** All manner of public selling, or offering or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day. § 47, Pen. C.

§ 6846. **Serving process prohibited.** All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except when such service shall be specially authorized by law. § 48, Pen. C.

§ 6847. **Sabbath breaking, how punished.** Every person guilty of Sabbath breaking is punishable by a fine of one dollar for each offense. § 49, Pen. C.

§ 6848. **Fines, how collected. No exemption.** The fines prescribed in this chapter for profane swearing and for Sabbath breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs. § 50, Pen. C.

§ 6849. **Maliciously serving process.** Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor. § 51, Pen. C.

§ 6850. **Compelling form of belief.** Any willful attempt, by means of threats or violence, to compel any person to adopt, practice or profess any particular form of religious belief, is a misdemeanor. § 52, Pen. C.

§ 6851. **Preventing religious act.** Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor. § 53, Pen. C.

§ 54, Pen. C.

§ 6852. Disturbing religious meeting. Every person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts or things hereinafter enumerated, is guilty of a misdemeanor.

§ 55, Pen. C.

§ 6853. Acts deemed to be, enumerated. The following are the acts deemed to constitute disturbance of a religious meeting:

1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting.

2. Exposing to sale or gift any ardent or distilled liquors, or keeping open any huckster shop within one mile of the place where any religious society or assembly shall be actually convened for religious worship, and in any other place than such as shall have been duly licensed and in which the person accused shall have actually resided or carried on business.

3. Exhibiting, within the like distance, any shows or plays without a license by the proper authority.

4. Engaging in, or aiding or promoting, within the like distance, any racing of animals or gaming of any description.

5. Obstructing in any manner, without authority of law, within the like distance, the free passage along any highway to the place of such meeting.

§ 6854. Time for prosecution limited. No prosecution for any of the offenses mentioned in this chapter shall be maintained unless commenced within thirty days next after the commission thereof.

CHAPTER 5.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

§ 56, Pen. C.
am'd.

§ 6855. Elector. Giving or receiving bribe. Every person, who, by force, threats, bribery or by offering to give or by giving a bribe to any elector, or by any corrupt means whatever, either directly or indirectly, attempts to influence or influences any such elector in giving his vote at any election; or who attempts to deter or deters him from giving his vote at such election, or attempts by any means whatever to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, or defrauds any elector at any such election by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for, or who, being an inspector, member of the board of election, judge or poll clerk of any election, while acting as such or during the continuance of an election, induces or attempts to induce any elector, either by menaces, or reward or promises thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars and not less than one hundred dollars and by imprisonment in the county jail not exceeding one year and not less than three months.

§ 6856. Elector. Illegal influence. Every person offering, giving or loaning to another any money or other thing of value, to induce him to influence any elector to vote in a particular way or for any person at any such election, shall be punished by a fine not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment. § 57, Pen. C.

§ 6857. Betting upon election, how punished. Every person who makes, offers or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast either in the aggregate or for any particular candidate, or upon the vote to be cast by any particular person or persons, or upon the decision to be made by any inspector of election, board of election or any member thereof, or any canvasser, board of canvassers or other election officers, or any question arising in the course of an election, or upon any event whatever depending upon the conduct or result of an election or upon the conduct or decision of any officer of an election or board of such officers, is guilty of a misdemeanor. § 58, Pen. C. am'd.

§ 6858. Offers of office, how punished. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person or persons to office, as an inducement or consideration to any person to vote for, or to procure or aid in procuring the election of such candidate, is guilty of a misdemeanor. § 59, Pen. C.

§ 6859. Communicating same. Every person who, not being a candidate, communicates any offer made in violation of the last section, to any person, with intent to induce him to vote for or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor. § 60, Pen. C.

§ 6860. Contributing money for elections, how punished. Exceptions. Every person who, with intent to promote the election, either of himself or of any other person or candidate, either: § 61, Pen. C.

1. Furnishes, or engages to pay or deliver any money or property, for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick, poor or infirm; or,

2. Furnishes, or engages to pay or deliver any money or property, for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills and other papers, previous to such election, is guilty of a misdemeanor.

§ 6861. Defrauding elector in his vote. Every person who fraudulently alters the ballot of any elector or substitutes one ballot for another, or furnishes any elector with a ballot otherwise than as provided and authorized by law, or with a ballot containing more than the proper number of names, or who intentionally practices any fraud upon any elector to induce him to deposit a ballot as his vote and to have the same thrown out and not counted, or otherwise to defraud him of his vote, is guilty of a misdemeanor. § 62, Pen. C. am'd.

§ 6862. Obstructing elector. Every person who willfully and without lawful authority obstructs, hinders or delays any elector on his way to any poll where an election shall be held, is guilty of a misdemeanor. § 63, Pen. C.

- § 64, Pen. C. **§ 6863. Double voting or offer.** Every person who votes more than once at any election, or who offers to vote after having once voted, either in the same or in another election precinct or district, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.
- § 65, Pen. C. **§ 6864. Unqualified voting.** Every person knowing himself not to be a qualified voter, who votes or offers to vote at any election, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months.
- § 66, Pen. C. **§ 6865. Procuring unqualified vote.** Every person who procures, aids, assists, counsels or advises another to give his vote, knowing that such person is disqualified, shall be punished by a fine not exceeding five hundred dollars, nor less than fifty dollars, and by imprisonment in the county jail not exceeding one year.
- § 67, Pen. C. **§ 6866. Advising unqualified voting.** Every person who procures or counsels another to enter any town, ward or election precinct or district for the purpose of giving his vote at an election, knowing that such person is not entitled so to vote, is guilty of a misdemeanor.
- § 68, Pen. C. **§ 6867. Voting in wrong precinct or district.** Every person who, at any election, knowingly votes or offers to vote in any election precinct or district in which he does not reside, or in which he is not authorized by law to vote, is guilty of a misdemeanor.
- § 741, Pen. C. **§ 6868. Voting unlawfully at town meeting.** Every person who votes at any annual township meeting, in a township in which he does not reside, or who offers to vote at any annual township meeting after having voted at an annual township meeting held in another township within the same year, is guilty of a misdemeanor.
- § 69, Pen. C. **§ 6869. Convicted felon. Denied vote.** Every person who, having been convicted of any bribery or felony, thereafter offers to vote at any election without having been pardoned and restored to all the rights of a citizen, is guilty of a misdemeanor.
- § 70, Pen. C. **§ 6870. Unauthorized registration, how punished.** Every person who causes his name to be registered as that of an elector, upon any registry of voters authorized by law to be kept in any town, city or election precinct or district of this state, knowing that he is not a qualified voter within the territorial limits covered by such registry, is punishable by imprisonment in the penitentiary not less than one year.
- § 71, Pen. C. **§ 6871. Personating registered voter.** Every person who, within any city, town or election precinct or district in this state in which a registry of qualified voters is by law authorized to be kept, falsely personates a registered voter, and in such personating offers to vote at any election, is punishable by imprisonment in the penitentiary not less than one year.
- § 72, Pen. C. **§ 6872. False statement, preventing registration.** Every person who, at the time of requesting his name to be registered as that of a qualified voter, upon any registry of voters authorized by law to be kept in any city, town or election precinct or district of this state, or at the time of offering his vote at any election, knowingly makes any false statement or employs any false representation or false pretense or token, to procure his name to be registered or his vote to be received, is guilty of a misdemeanor.

§ 6873. Constructive false statements. A false statement, representation, or token, made or used in the presence and to the knowledge of a person requesting his name to be registered or offering his vote, is to be deemed made by himself, if it appears that it was made or used in support of his claim to be registered or to vote, that he knew it to be false and suffered it to pass uncontradicted. § 73, Pen. C.

§ 6874. Disturbance of public meeting. Every person who willfully disturbs or breaks up any public meeting of electors and others, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor. § 74, Pen. C.

§ 6875. Preventing public meeting of electors. Every person who, by threats, intimidation or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor. § 75, Pen. C.

§ 6876. Preventing attendance at public meeting. Every person who makes use of any force or violence or of any threat to do any unlawful act, as a means of preventing an elector from attending any public meeting lawfully held for the purpose of considering any public questions, is guilty of a misdemeanor. § 76, Pen. C.

§ 6877. Intimidating and bulldozing electors. Every person who willfully, by unlawful arrest, by force and violence or by threats or intimidation, prevents or endeavors to prevent an elector from freely giving his vote at any election, or employs either of such means to hinder him from voting, or to cause him to vote for any person or candidate, shall be punished by a fine not exceeding one thousand dollars, and not less than fifty dollars. § 77, Pen. C.

§ 6878. Violence, threats, etc., of electors. Every person who procures or endeavors to procure the vote of any elector, or the influence of any person or other electors, at any election, for himself or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealings in business or trade, or enforcing the payment of debts, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or by his means or procurement, shall be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding six months. § 78, Pen. C.

§ 6879. Disobedience of election judges and officers. Every person who willfully disobeys a lawful command of an inspector or judge of election or board of election, or board of judges of an election or election officers, given in the execution of his or their duty as such at any election, is guilty of a misdemeanor. § 79, Pen. C. am'd.

§ 6880. Violence disturbing election. Every person who is guilty of any riotous conduct, or causes any disturbance or breach of the peace, or uses any disorderly violence or threats of violence, whereby any elector is impeded or hindered, or whereby the lawful proceedings of any inspector or judge of election or poll clerk or other officer of election or election officer, or board of election or canvasser at such election, in the discharge of his or their duty, are interfered with, is guilty of a misdemeanor. § 80, Pen. C. am'd.

§ 6881. Disobedience. Summary arrest therefor. Whenever, at an election, any person refuses to obey the lawful command of an inspector or judge of election, or of a board of election or other officer of election or election officer or board of canvassers, or by any disorderly conduct in his or their presence interrupts or disturbs his or their proceeding, he or they may make an order directing the

sheriff or any constable of the county, or one or more special constables to be appointed by him or them, to take the person so offending into custody and detain him until the final canvass of the votes shall be completed. But such order shall not prohibit the person taken into custody from voting at such election.

§ 82, Pen. C. **§ 6882. Such arrest, not defense.** The fact that any person, offending against the provisions of the preceding section, was taken into custody and detained, as therein authorized, forms no defense to a prosecution for the offense committed, under any provisions of this code.

§ 83, Pen. C. **§ 6883. Destroying ballots or boxes.** Every person who willfully breaks or destroys, on the day of an election or before the canvass is completed, any ballot box used or intended to be used at such election, or defaces, injures, destroys or conceals any ballot which has been deposited in any ballot box at an election, and has not already been counted or canvassed, or any poll list used or intended to be used at such election, is guilty of a felony.

§ 31, c. 66, 1893, am'd. **§ 6884. False certificates. Suppressing certificate.** Every person who falsely makes, or makes oath to or fraudulently destroys any certificate of nomination or any part thereof, or files or receives for filing any certificate of nomination, knowing the same or any part thereof to be falsely made, or suppresses any certificate of nomination which has been duly filed, or any part thereof, or forges or falsely makes the official indorsement on any ballot, or willfully neglects properly to indorse said ballot shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years.

§ 32, c. 66, 1893, am'd. **§ 6885. Destroying supplies, lists or cards.** Every person who, during an election, willfully removes or destroys 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 an election willfully defaces or destroys any list of candidates posted in accordance with the provisions of law, or any copy of the printed ticket so posted, or who, during an election, tears down or defaces the cards printed for the instruction of voters, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

§ 84, Pen. C. am'd. **§ 6886. False poll list.** Every poll clerk or clerk of the poll at any election, who willfully keeps a false poll list, or who knowingly inserts in his poll list any false statement, is guilty of a misdemeanor.

§ 85, Pen. C. am'd. **§ 6887. Misconduct of judges. Challenges.** Every inspector or judge of an election, who willfully excludes any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election, or who willfully receives a vote from any person who has been duly challenged in relation to his right to vote at such election, without exacting from such person such oath or other proof of qualification as may be required by law, or who willfully omits to challenge any person offering to vote, whom he knows or suspects not to be duly entitled to vote, and who has not been challenged by any other person, is guilty of a misdemeanor.

§ 86, Pen. C. am'd. **§ 6888. Falsely canvassing or certifying.** Every inspector or judge of election, member of any board of election or of canvassers, poll clerk, messenger or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of votes cast at any election, who willfully makes any false canvass of

such votes, or makes, signs, publishes or delivers any false returns of such election, knowing the same to be false, or willfully defaces, destroys or conceals any statement or certificate intrusted to his care, is guilty of a misdemeanor.

§ 6889. **Bribing election officers.** Every person who gives or offers a bribe to any inspector, judge, clerk, canvasser or other officer of any election, or of any board of election, as a consideration for some act done or omitted to be done, contrary to his official duty in relation to such election, shall be punished by a fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months. § 57, Pen. C. am'd.

§ 6890. **Penalty, disfranchised.** Any person guilty of either of the offenses mentioned in sections 6855 and 6856 shall thereafter be forever disfranchised and rendered ineligible to any office of trust or profit within the state, including that of representative to congress. § 58, Pen. C.

§ 6891. **Witness not excused, not punished.** No person shall be excused from testifying upon a prosecution for an offense mentioned in section 6856 upon the ground that his statement might tend to criminate himself, but any person so testifying against the other party shall thereafter be exempt from punishment for such offense mentioned in said section. § 59, Pen. C.

§ 6892. **Election defined.** The word "election," as used in this chapter, designates only elections had within this state for the purpose of enabling electors, as such, to choose some public officer or officers under the laws of this state, or of the United States. § 60, Pen. C.

§ 6893. **Irregularities no defense.** Irregularities or defects in the mode of noticing, convening, holding or conducting an election authorized by law, form no defense to a prosecution for a violation of the provisions of this chapter. § 61, Pen. C.

§ 6894. **Rights. Lawful interference.** Nothing in this chapter shall be construed to authorize the punishment of any person who, by authority of law, may interfere to prevent or regulate an election which has been unlawfully noticed or convened, or is being or is about to be unlawfully conducted. § 62, Pen. C.

§ 6895. **Questions submitted. Criminal acts.** Every act which by the provisions of this chapter is made criminal when committed with reference to the election of a candidate, is equally criminal when committed with reference to the determination of a question submitted to electors to be decided by votes cast at an election. § 63, Pen. C.

§ 6896. **Good faith. Given in evidence.** Upon any prosecution for procuring, offering or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not. § 64, Pen. C.

§ 6897. **Selling liquors on election day.** Every person who sells, gives away or disposes of any intoxicating liquors as a beverage, on the day of any general election or special or local election, in the town, city or county where held, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the county jail not to exceed twenty days, and by fine not exceeding one hundred and not less than fifty dollars. § 65, Pen. C. am'd.

§ 6898. **Unlawful voting at caucus.** Every person who is not a qualified elector of the ward or election precinct in which any caucus or primary meeting is held and having for its object either immedi- § 1, c. 28, 1887. am'd.

ately or ultimately, the nomination or selection of any delegate, or of any candidate for a public office to be voted for at any election in this state, who in any manner votes upon any question or issue pending before or submitted to such caucus or primary meeting, is guilty of a misdemeanor.

§ 1, c. 112, 1890.
am'd.

§ 6899. Political convention, who may use proxy at. Every person who, at a political convention or a convention of a political character, called, convened or held within this state, uses or attempts to use the proxy of a delegate sent or elected thereto from a political subdivision designated or recognized as the unit of representation therein, unless he is an actual resident of such political subdivision, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than twenty and not exceeding one hundred dollars, or by imprisonment in the county jail not less than ten days and not exceeding one year, or both, at the discretion of the court.

CHAPTER 6.

CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

§ 96, Pen. C.

§ 6900. Exercising office without having qualified. Every person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his right to the office.

§ 97, Pen. C.

§ 6901. Acts of officer de facto. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, when other persons than himself are interested in maintaining the validity of such acts.

§ 98, Pen. C.

§ 6902. Usurping or falsely assuming office. Every person who shall falsely assume or pretend to be any state, county or township officer, or who shall knowingly take upon himself to act as such, or to require any person to act as such, or assist him in any matter pertaining to such office, shall be punished by imprisonment in the county jail, not more than two years nor less than three months, and by fine not exceeding five hundred nor less than fifty dollars.

§ 99, Pen. C.

§ 6903. Giving or offering bribes. Every person who gives or offers any bribe to an executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion or other proceedings of such officer, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 100, Pen. C.

§ 6904. Asking or receiving bribes. Every executive officer or person elected or appointed to an executive office who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending or

which may by law be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto, forfeits his office and is forever disqualified from holding any public office under this state.

§ 6905. Preventing officer's duty. Every person who attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, is guilty of a misdemeanor. § 101. Pen. C.

§ 6906. Resisting officer. Every person who knowingly resists, by the use of force or violence, any executive officer in the performance of his duty, is guilty of a misdemeanor. § 102. Pen. C.

§ 6907. Taking unlawful fees. Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. § 103. Pen. C.

§ 6908. Omitting or delaying official acts for reward. Every executive officer who asks or receives any emolument, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor. § 104. Pen. C.

§ 6909. Fees for services not rendered. Advance fees. Every executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs, or of fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor. § 105. Pen. C.

§ 6910. Taking unlawful reward. Fugitives from justice. Every officer of this state who asks or receives any compensation, fee or reward of any kind, for any service rendered or expense incurred in procuring from the governor of this state a demand upon the executive authority of a state or territory of the United States, for the surrender of a fugitive from justice, or of any service rendered or expense incurred in procuring the surrender of such fugitive, or of conveying him to this state or for detaining him therein, except upon an employment by the governor of this state, and upon an account duly audited and paid out of the state treasury, is guilty of a misdemeanor. § 106. Pen. C.

§ 6911. Buying appointments to office. Every person who gives or agrees or offers to give any gratuity or reward in consideration that himself or any other person shall be appointed to any public office, or shall be permitted to, or to exercise, perform or discharge the prerogatives or duties of any office, is punishable by imprisonment in the county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars nor more than one thousand dollars, or both. § 107. Pen. C.

§ 6912. Selling appointments to office. Every person who, directly or indirectly, asks or receives or promises to receive any gratuity or reward, or any promise of a gratuity or reward, for appointing another person or procuring for another person an appointment to any public office, or any clerkship, deputation or other subordinate position in any public office, is punishable by imprisonment in the § 108. Pen. C.

county jail not less than six months nor more than two years, or by a fine of not less than two hundred dollars nor more than one thousand dollars, or both.

§ 109, Pen. C.

§ 6913. Rewards for appointment or deputation. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise, perform or discharge any of the prerogatives or duties of his office, is punishable by imprisonment in the county jail not less than six months nor more than two years, and by a fine of not less than two hundred dollars nor more than one thousand dollars; and in addition thereto he forfeits his office.

§ 110, Pen. C.

§ 6914. Unlawful appointments void. Acts valid. Every grant or deputation made contrary to the provisions of the two preceding sections is void; but official acts done before a conviction for any offense prohibited by those sections, shall not be deemed invalid in consequence of the invalidity of such grant or deputation.

§ 111, Pen. C.

§ 6915. Exercising functions after term. Every person who having been an executive officer, willfully exercises any of the functions of his office after his term of office has expired and a successor has been duly elected or appointed, and has qualified in his place, and he has notice thereof, is guilty of a misdemeanor.

§ 112, Pen. C.

§ 6916. Refusal to surrender seal or books. Every person who having been an executive officer of this state, wrongfully refuses to surrender the official seal or any of the books and papers appertaining to his office, to his successor, who has been duly elected or appointed, and has duly qualified, and has demanded the surrender of the books and papers of such office, is guilty of a misdemeanor.

§ 113, Pen. C.

§ 6917. Administrative officers included. The various provisions of this chapter which relate to executive officers apply in relation to administrative officers in the same manner as if administrative and executive officers were both mentioned together.

§ 81, Const.

§ 6918. Governor receiving bribes. Menacing. Appointing to or removing from office. Every person being 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 or upon condition that any member of the legislative assembly, or either house thereof, 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 of the legislative assembly or either house thereof, by the threatened use of his veto power; or who offers or promises any member of the legislative assembly or either house thereof, that he, the said governor, will nominate for appointment or appoint any particular person or persons to any office created, or thereafter to be created, in consideration or upon condition that any such member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly; or who threatens any member of the legislative assembly or either house thereof, that he, the said governor, will remove any person or persons from any office or position held by such person or persons under the laws of this state, with intent in any manner to influence the action of said member, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or

by a fine not exceeding five thousand dollars, or both, and upon conviction of any or either of the offenses mentioned in this section shall forfeit any and all right to hold any office of trust or honor in this state.

CHAPTER 7.

CRIMES AGAINST THE LEGISLATIVE POWER.

§ 6919. Preventing meeting of legislative assembly. § 114, Pen. C.
Every person who willfully and by force or fraud prevents the legis- am'd.
lative assembly of this state, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is punishable by imprisonment in the penitentiary not less than five nor more than ten years, or by a fine of not less than five hundred dollars, nor more than two thousand dollars, or both.

§ 6920. Disturbing the legislative assembly. Every per- § 115, Pen. C.
son who willfully disturbs the legislative assembly of this state, or am'd.
either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house of the legislative assembly, tending to interrupt its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 6921. Compelling adjournment. Every person who will- § 116, Pen. C.
fully and by force or fraud compels or attempts to compel the legis-
lative assembly of this state or either of the houses composing it, to
adjourn or disperse, is punishable by imprisonment in the peniten-
tiary not less than five nor more than ten years, or by a fine of not
less than five hundred dollars nor more than two thousand dollars, or
both.

§ 6922. Intimidating members. Every person who willfully, § 117, Pen. C.
by intimidation or otherwise, prevents any member of the legislative
assembly of this state from attending any session of the house of
which he is a member, or any committee thereof, or from giving his
vote upon any question which may come before such house, or from
performing any other official act, is guilty of a misdemeanor.

§ 6923. Compelling either house to perform or omit act. § 118, Pen. C.
Every person who willfully compels or attempts to compel either of
the houses composing the legislative assembly of this state to pass,
amend or reject any bill or resolution, or to grant or refuse any
petition, or to perform or omit to perform any other official act, is
punishable by imprisonment in the penitentiary not less than five nor
more than ten years, or by a fine of not less than five hundred dollars
nor more than two thousand dollars, or both.

§ 6924. Altering draft of bill. Every person who fraudu- § 119, Pen. C.
lently alters the draft of any bill or resolution which has been pre-
sented to either of the houses composing the legislative assembly, to
be passed or adopted, with intent to procure it to be passed or
adopted by either house, or certified by the presiding officer of either
house, in language different from that intended by such house, is
guilty of a felony.

§ 120, Pen. C.

§ 6925. Altering engrossed copy. Every person who fraudulently alters the engrossed copy or enrollment of any bill which has been passed by the legislative assembly of this state, with intent to procure it to be approved by the governor or certified by the secretary of state, or printed or published by the printer of the statutes in language different from that in which it was passed by the legislative assembly, is guilty of a felony.

§ 121, Pen. C.

§ 6926. Giving or offering bribes to members. Every person who gives or offers to give a bribe to any member of the legislative assembly, or attempts directly or indirectly, by menace, deceit, suppression of truth or any other corrupt means, to influence a member in giving or withholding his vote, or in not attending the house of which he is a member, or any committee thereof, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 122, Pen. C.
am'd.

§ 6927. Members receiving bribes. Every member of either of the houses composing the legislative assembly of this state, who asks, receives or agrees to receive any bribe upon any understanding that his official vote, opinion, influence, judgment or action shall be influenced thereby, or shall be given in any manner or upon any particular side of any question or matter upon which he may be required to act in his official capacity, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or both.

§ 40, Const.

§ 6928. Members. Solicitation of bribery defined. Punishment. Every person elected to either house of the legislative assembly, who shall offer or promise to give his official vote or influence, in favor of or against any measure or proposition pending, or proposed to be introduced into the legislative assembly, or either house thereof, in consideration or upon condition that any other person elected to the same legislative assembly or either house thereof, will give or will promise or assent to give, his vote or influence in favor of, or against any other measure or proposition pending, or proposed to be introduced into such legislative assembly or house, shall be deemed guilty of solicitation of bribery and shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one and not exceeding five years, or by fine not exceeding five thousand dollars, or both, and shall not thereafter be eligible to the legislative assembly or either house thereof.

§ 40, Const.

§ 6929. Members. Vote in consideration of vote. Bribery. Every member of the legislative assembly or either house thereof, who shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced into such legislative assembly or either house thereof, or offer or promise or assent so to do, upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition, pending or proposed to be introduced into such legislative assembly or house, or in consideration that any other member has given his vote or influence for or against any other measure or proposition in such legislative assembly or house, shall be deemed guilty of bribery, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding

five thousand dollars, or both, and shall not thereafter be eligible to the legislative assembly or either house thereof.

§ 6930. Members. Governor. Acts by, deemed felony. § 81, Const.

Every person elected to either house of the legislative assembly who gives, or offers or promises to give his official vote or influence in favor of or against any measure or proposition pending or proposed to be introduced into, or that has already passed or been passed by either house of the legislative assembly, in consideration or upon condition that any person, being governor of this state, shall approve or disapprove, veto or sign or agree to approve or disapprove, veto or sign any such measure or proposition, or any measure, proposition, bill or act or proposed law that has already passed or been passed by said legislative assembly, or either house thereof, or in consideration or upon condition that any person, being or acting governor of this state, shall nominate for appointment or appoint or remove any person or persons to or from any office or position under the laws of this state, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both, and upon conviction of any or either of the offenses mentioned in this section, shall forfeit any and all right to hold or exercise any office of trust or honor in this state.

§ 6931. Senators. Governor. Acts by, deemed felony, § 81, Const.

Every person elected to the senate of this state who shall offer or agree to give his official vote or influence for or against the confirmation of any person or persons nominated or to be nominated for appointment or appointed or to be appointed to any office in this state, in consideration or upon condition that the person being governor of this state shall nominate for appointment or appoint or refuse to appoint or nominate for appointment any person or persons to or for any office or position in this state, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both, and upon conviction of any or either of the offenses mentioned in this section shall forfeit any and all right to hold or exercise any office of trust or honor in this state.

§ 6932. Witness refusing to attend. Every person who, § 123, Pen. C.
being duly summoned to attend as a witness before either house of the legislative assembly, or any committee thereof authorized to summon witnesses, refuses or neglects without lawful excuse to attend pursuant to such summons, is guilty of a misdemeanor.

§ 6933. Refusing to testify. Every person who, being present § 124, Pen. C.
before either house of the legislative assembly, or any committee thereof authorized to summon witnesses, willfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce upon reasonable notice any material and proper books, papers or documents in his possession or under his control, is guilty of a misdemeanor.

§ 6934. Members. Conviction. Forfeiture of office. The § 125, Pen. C.
conviction of a member of the legislative assembly of either of the crimes defined in this chapter, involves as a consequence, in addition to the punishment prescribed by this code, a forfeiture of his office, and disqualifies him from ever afterwards holding any office under this state.

CHAPTER 8.

CRIMES AGAINST PUBLIC JUSTICE, BRIBERY AND CORRUPTION.

§ 126, Pen. C. **§ 6935. Bribes to judges, jurors, referees, etc.** Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, umpire or assessor, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both.

§ 127, Pen. C. **§ 6936. Judicial officers receiving bribes.** Every judicial officer of this state who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by a fine not exceeding five thousand dollars, or both; and in addition thereto forfeits his office and is forever disqualified from holding any public office under this state.

§ 128, Pen. C. **§ 6937. Jurors, referees and others receiving bribes.** Every juror, referee, arbitrator, umpire or assessor, and every person authorized by law to hear or determine any question or controversy, who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or decision upon any matter or question which is or may be brought before him for decision, shall be thereby influenced, is guilty of felony.

§ 129, Pen. C. **§ 6938. Misconduct by jurors and others.** Every juror or person drawn or summoned as a juror or chosen arbitrator or umpire, or appointed referee, who, either:

1. Makes any promise or agreement to give a verdict for or against any party; or,

2. Willfully permits any communication to be made to him, or receives any book, paper, instrument or information relative to any cause pending before him, except according to the regular course of proceeding upon the trial of such cause,

Is guilty of a misdemeanor.

§ 130, Pen. C. **§ 6939. Judicial officers accepting gifts.** Every judicial officer, juror, referee, arbitrator or umpire, who accepts any gift from any person, knowing him to be a party in interest or the attorney or counsel of any party in interest to any action or proceeding then pending or about to be brought before him, is guilty of a misdemeanor.

§ 131, Pen. C. **§ 6940. Gift defined.** The word "gift," in the foregoing section shall not be taken to include property received by inheritance, by will or by gift in view of death.

§ 132, Pen. C. **§ 6941. Attempts to influence jurors and others.** Every person who attempts to influence a juror or any person summoned or drawn as a juror, or chosen an arbitrator or appointed a referee, in respect to his verdict or decision of any cause or matter pending, or about to be brought before him, either:

1. By means of any communication, oral or written, had with him except in the regular course of proceedings upon the trial of the cause;

2. By means of any book, paper or instrument exhibited otherwise than in the regular course of proceedings upon the trial of the cause;

3. By means of any threat or intimidation;

4. By means of any assurance or promise of any pecuniary or other advantage; or,

5. By publishing any statement, argument or observation relating to the cause,

Is guilty of a misdemeanor.

§ 133, Pen. C.

§ 6942. **Drawing jurors fraudulently.** Every person authorized by law to assist at the drawing of any jurors to attend any court, who willfully puts or consents to the putting upon any list of jurors as having been drawn, any name which shall not have been drawn for that purpose in the manner prescribed by law; or, who omits to place on such list any name that shall have been drawn in the manner prescribed by law; or, who signs or certifies any list of jurors as having been drawn which was not drawn according to law; or, who is guilty of any other unfair, partial or improper conduct in the drawing of any such list of jurors, is guilty of a misdemeanor.

§ 134, Pen. C.

§ 6943. **Misconduct of officer in charge of jury.** Every officer to whose charge any jury is committed by any court or magistrate, who negligently or willfully permits them or any of them, either:

1. To receive any communication from any person;

2. To make any communication to any person;

3. To obtain or receive any book or paper or refreshment; or,

4. To leave the jury room without the leave of such court or magistrate first obtained,

Is guilty of a misdemeanor.

CHAPTER 9.

RESCUES.

§ 6944. **Rescuing persons from custody.** Every person who by force or fraud rescues or attempts to rescue, or aids another person in rescuing or in attempting to rescue any prisoner from any officer or other person having him in lawful custody, is punishable as follows:

§ 135, Pen. C.

1. If such prisoner was in custody upon a charge or conviction of felony, by imprisonment in the penitentiary not less than ten years.

2. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 136, Pen. C. **§ 6945. Injuring. Retaking goods from custody.** Every person who willfully injures or destroys, takes or attempts to take, or assists any other person in taking or attempting to take from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER 10.

ESCAPES AND AIDING THEREIN.

§ 137, Pen. C.
am'd. **§ 6946. Persons in custody escaping. Rearrest. Imprisonment.** Every person, in custody under sentence of imprisonment for any crime, who escapes from custody, may be recaptured and imprisoned for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

§§ 138, 140,
Pen. C.
am'd. **§ 6947. Escaping from custody. Punishment.** Every person who, being confined in the penitentiary or other prison, or being in the lawful custody of an officer or other person, by force or fraud escapes from such prison or custody, is guilty of a felony if such custody is upon a charge, arrest, commitment or conviction for a felony; and of a misdemeanor, if such custody or confinement is upon a charge, arrest, commitment or conviction for a misdemeanor.

§ 139, Pen. C. **§ 6948. Attempts to escape from penitentiary.** Every person confined in the penitentiary for a term less than for life, who attempts by force or fraud, although unsuccessfully, to escape from such prison, is guilty of a felony.

§ 141, Pen. C. **§ 6949. Attempts to escape from other prisons.** Every person confined in any prison other than the penitentiary, who attempts by force or fraud, although unsuccessfully, to escape therefrom, is punishable by imprisonment in the county jail not exceeding one year.

§ 142, Pen. C.
am'd. **§ 6950. Assisting person in prison to escape.** Every person who willfully, by any means whatever, assists any person confined in any prison to escape therefrom, is punishable as follows:

1. If the person assisted was held or confined upon a charge, arrest, commitment or conviction of felony, by imprisonment in the penitentiary not less than one and not exceeding ten years.

2. If the person assisted was held or confined otherwise than upon a charge, arrest, commitment or conviction of felony, by imprisonment in the county jail not exceeding one year or by fine not exceeding five hundred dollars, or both.

§ 143, Pen. C.
am'd. **§ 6951. Aiding escape by information, disguise, weapon.** Every person who, with intent to effect or facilitate the escape of a prisoner, whether the escape is effected or attempted or not, enters a prison, or conveys to a prisoner any information, or sends into a prison any disguise, instrument, weapon or other thing, is punishable as follows:

1. If such prisoner is held or confined upon a charge, arrest, commitment or conviction for felony, by imprisonment in the penitentiary not less than one and not exceeding ten years.

2. If such prisoner is held or confined otherwise than upon a charge, arrest, commitment or conviction for felony, by imprisonment in the county jail not exceeding one year, or by a fine of five hundred dollars.

§ 6952. **Assisting escape from officer.** Every person who aids or assists a prisoner in escaping or attempting to escape from the lawful custody of a sheriff or other officer or person, is guilty of a felony, if the prisoner is held under arrest, commitment or conviction for a felony, or upon a charge thereof; and of a misdemeanor, if the prisoner is held under arrest, commitment or conviction for a misdemeanor, or upon a charge thereof. § 145. Pen. C. am'd.

§ 6953. **Officer permitting escape.** Every sheriff or other officer or person, who allows a prisoner, lawfully in his custody, in any action or proceeding, civil or criminal, or in any prison under his charge or control, to escape or go at large, except as permitted by law, or connives at or assists such escape, or omits an act or duty whereby such escape is occasioned or contributed to or assisted, is:

1. If he corruptly and willfully allows, connives at or assists the escape, guilty of a felony.

2. In any other case, he is guilty of a misdemeanor.

§ 6954. **Punishment for permitting escape.** Every officer who is convicted of the offense specified in the first subdivision of the last section, forfeits his office, and is forever disqualified to hold any office or place of trust, honor or profit under the laws of this state.

§ 6955. **Concealing escaped prisoner.** Every person who knowingly or willfully conceals or harbors for the purpose of concealment, a person who has escaped or is escaping from custody, is guilty of a felony if the prisoner is held upon a charge or conviction of felony, and of a misdemeanor if the person is held upon a charge or conviction of misdemeanor. § 144. Pen. C. am'd.

§ 6956. **Prison defined.** The term "prison," in this chapter includes the penitentiary, county jails, and every place designated by law for the keeping of persons held in custody under process of law or under any lawful arrest. § 146. Pen. C.

§ 6957. **Prisoner defined.** The term "prisoner," in this chapter includes every person held in custody under process of law issued from a court of competent jurisdiction, whether civil or criminal, or under any lawful arrest. § 147. Pen. C.

§ 6958. **Escaping from penitentiary. Prosecution. Expense, how paid.** Whenever a prosecution takes place, of any person for any crime or public offense committed by, or charged against him while such person was, or is under sentence to be or is confined in the penitentiary, the clerk of the district court, where such trial is had, shall make out a detailed statement of all the costs incurred by the county for the trial of such person, including his preliminary examination, and for keeping and guarding him, and the judge of said court shall certify that the same is correct. The said clerk shall thereupon transmit said certified statement to the state auditor, and said state auditor shall audit said expenses and statement and draw his warrant in favor of the treasurer of the county for the amount allowed, to be paid out of the state treasury.

CHAPTER 11.

FORGING, STEALING, MUTILATING AND FALSIFYING
JUDICIAL AND PUBLIC RECORDS.

- § 148, Pen. C. **§ 6959. Larceny. Destruction of public records by officer.** Every clerk, register or other officer having the custody of any record, map or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, or fraudulently removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, and in addition thereto forfeits his office.
- § 149, Pen. C. **§ 6960. Same by others.** Every person not an officer such as is mentioned in the last section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.
- § 150, Pen. C. **§ 6961. Offering forged or false instruments for record.** Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state, or of the United States, is guilty of felony.

CHAPTER 12.

PERJURY AND SUBORNATION OF PERJURY.

- § 151, Pen. C. **§ 6962. Perjury.** Every person who, having taken an oath that he will testify, declare, depose or certify truly before any competent tribunal, officer or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states any material matter which he knows to be false, is guilty of perjury.
- § 152, Pen. C. **§ 6963. Oath defined.** The term "oath," as used in the last section, includes an affirmation, and every other mode of attesting the truth of that which is stated, which is authorized by law.
- § 153, Pen. C. **§ 6964. Oath of office excepted.** So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the preceding sections of this chapter.
- § 154, Pen. C. **§ 6965. Irregularities no defense.** It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 6966. **Incompetency no defense.** It is no defense to a § 155, Pen. C.
prosecution for perjury that the accused was not competent to give
the testimony, deposition or certificate of which falsehood is alleged.
It is sufficient that he actually was required to give such testimony
or made such deposition or certificate.

§ 6967. **Materiality not necessary.** It is no defense to a § 156, Pen. C.
prosecution for perjury that the accused did not know the materiality
of the false statement made by him; or that it did not in fact affect
the proceeding in or for which it was made. It is sufficient that it
was material, and might have been used to affect such proceeding.

§ 6968. **When deposition complete.** The making of a depo- § 157, Pen. C.
sition or certificate is deemed to be complete, within the provisions
of this chapter, from the time when it is delivered by the accused to
any other person with intent that it be uttered or published as true.

§ 6969. **False statement.** An unqualified statement of that § 158, Pen. C.
which one does not know to be true is equivalent to a statement of
that which one knows to be false.

§ 6970. **False list under oath, perjury.** Every person who § 13, c. 28,
willfully makes or gives under oath or affirmation a false list of his
taxable property, or a false list of the taxable property in his use or
possession or under his control and required by law to be listed by
him, is guilty of perjury. Pol. C.
am'd.

§ 6971. **Perjury, how punished.** Perjury is punishable by § 159, Pen. C.
imprisonment in the penitentiary as follows: am'd.

1. When committed on the trial of an information or indictment
for felony, by imprisonment not less than ten years.

2. When committed on any other trial or proceeding in a court of
justice, by imprisonment for not less than one and not more than ten
years.

3. In all other cases by imprisonment not less than one and not
more than five years.

§ 6972. **Summary committal of witness for perjury.** § 160, Pen. C.
Whenever it appears probable to any court of record that any person
who has testified in any action or proceeding in such court has com-
mitted perjury, such court may immediately commit such person, by
an order or process for that purpose, to prison, or take an undertak-
ing with sureties for his appearing and answering to an information
or indictment for perjury. am'd.

§ 6973. **Witness to perjury bound over to appear.** Such § 161, Pen. C.
court shall thereupon bind over the witnesses to establish such per-
jury to appear at the proper court to testify upon the trial in case an
information or an indictment is filed or found for such perjury, and
shall also cause immediate notice of such commitment or undertak-
ing with the names of the witnesses so bound over, to be given to the
state's attorney of the county. am'd.

§ 6974. **Papers. Documents retained.** If, upon the hear- § 162, Pen. C.
ing of such action or proceeding in which such perjury has probably
been committed, any papers or documents produced by either party
shall be deemed necessary to be used on the prosecution for such per-
jury, the court may by order detain such papers or documents from
the party producing them, and direct them to be delivered to the
state's attorney.

§ 6975. **Subornation of perjury defined.** Every person who § 163, Pen. C.
willfully procures another person to commit any perjury, is guilty of
subornation of perjury.

- § 164. Pen. C. **§ 6976. Subornation, punishment of.** Every person guilty of subornation of perjury is punishable in the same manner as he would be if personally guilty of the perjury so procured.
- § 165. Pen. C. **§ 6977. Same, conviction of, disqualifies.** No person who has been convicted of perjury or of subornation of perjury, shall thereafter be received as a witness in any action, proceeding or matter whatever upon his own behalf; nor in any action or proceeding between adverse parties, against any person who shall object thereto, until the judgment against him has been reversed. But when such person has been actually received as a witness contrary to the provisions of this section, his incompetency shall not prejudice the rights, innocently acquired, of any other person claiming under the proceeding in which such person was so received.

CHAPTER 13.

FALSIFYING EVIDENCE.

- § 166. Pen. C. **§ 6978. Offering false evidence.** Every person who, upon any trial, proceeding, inquiry or investigation whatever, authorized by law, offers in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, is punishable in the same manner as the forging or false alteration of such instrument is made punishable by the provisions of this code.
- § 167. Pen. C. **§ 6979. Deceiving a witness.** Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any witness or person about to be called as a witness, upon any trial, proceeding, inquiry or investigation whatever, proceeding by authority of law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.
- § 168. Pen. C. **§ 6980. Preparing false evidence.** Every person guilty of falsely preparing any book, paper, record, instrument in writing or other matter or thing, with intent to produce it or allow it to be produced as genuine, upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of a felony.
- § 169. Pen. C. **§ 6981. Destroying evidence.** Every person who, knowing that any book, paper, record, instrument in writing or other matter or thing, is about to be produced in evidence upon any trial, proceeding, inquiry or investigation whatever, authorized by law, willfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor.
- § 170. Pen. C. **§ 6982. Preventing witness attending.** Every person who willfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the command of the summons or subpoena, is guilty of a misdemeanor.
- § 6983. Same. Contemplated witness.** Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding or inquiry, authorized by law, is guilty of a misdemeanor.

§ 6984. Bribing witness. Every person who gives or offers § 171, Pen. C. or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a misdemeanor.

CHAPTER 14.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

§ 6985. Injury to records and embezzlement. Every § 172, Pen. C. sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office; or,

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him in virtue of his office,

Is guilty of a felony.

§ 6986. Permitting escapes by officer. Every sheriff, cor- § 173, Pen. C. oner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer, who either:

1. Allows any person lawfully held by him in custody to escape or go at large, except as may be permitted by law; or,

2. Receives any gratuity or reward, or any security or promise of one, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape is attempted or not; or,

3. Commits any unlawful act tending to hinder justice,

Is guilty of a misdemeanor.

§ 6987. Refusing to receive prisoner. Every officer who, § 174, Pen. C. in violation of a duty imposed upon him by law as such officer to receive into his custody any person as a prisoner, willfully neglects or refuses so to receive such person into his custody, is guilty of a misdemeanor.

§ 6988. Delaying to take prisoner before magistrate. § 175, Pen. C. Every public officer or other person having arrested any person upon any criminal charge, who willfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor.

§ 6989. Arrest or seizure without lawful authority. § 176, Pen. C. Every public officer or person pretending to be a public officer, who under the pretense or color of any process or other legal authority, arrests any person, or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without due and legal process, is guilty of a misdemeanor.

- § 177. Pen. C. **§ 6990. Misconduct executing search warrant.** Every peace officer who, in executing a search warrant, willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.
- § 178. Pen. C. **§ 6991. Refusing to aid officer.** Every person who, after having been lawfully commanded to aid any officer in arresting any person or in retaking any person who has escaped from legal custody, or in executing any legal process, willfully neglects or refuses to aid such officer, is guilty of a misdemeanor.
- § 179. Pen. C. **§ 6992. Refusing to make arrest.** Every person who, after having been lawfully commanded by any magistrate to arrest another person, willfully neglects or refuses so to do, is guilty of a misdemeanor.
- § 180. Pen. C. **§ 6993. Insurrection. Resisting execution of process.** Every person who, after proclamation issued by the governor declaring any county to be in a state of insurrection, resists or aids in resisting the execution of process in the county declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor to quell or suppress an insurrection, is punishable by imprisonment in the penitentiary not less than two years.
- § 181. Pen. C. **§ 6994. Obstructing officer in duty.** Every person who willfully delays or obstructs any public officer in the discharge or attempt to discharge any duty of his office, is guilty of a misdemeanor.
- § 182. Pen. C. **§ 6995. Extra judicial oaths.** Every person who takes an oath before an officer or person authorized to administer judicial oaths, except when such oath is required or authorized by law, or is required by the provisions of some contract as the basis of or in proof of a claim, or when the same has been agreed to be received by some person as proof of any fact, in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor.
- § 183. Pen. C. **§ 6996. Administering same.** Every officer or other person who administers an oath to another person, or who makes and delivers any certificate that another person has taken an oath, except when such oath is required by the provisions of some contract as a basis of or proof of a claim, or when the same has been agreed to be received by some person as proof of any fact in the performance of any contract, obligation or duty, instead of other evidence, is guilty of a misdemeanor.
- § 184. Pen. C. **§ 6997. Compounding crimes.** Every person who, having knowledge of the actual commission of a crime or violation of statute, takes any money or property of another or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal such crime or violation of statute, or to abstain from any prosecution therefor, or to withhold any evidence thereof, is punishable as follows:
1. By imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, when the crime compounded is one punishable either by death or by imprisonment in the penitentiary for life.
 2. By imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding six months, when the crime compounded was punishable by imprisonment in the penitentiary for any other term than for life.

3. By imprisonment in the county jail not exceeding one year, or by a fine not exceeding two hundred dollars, or by both such fine and imprisonment, when the crime or violation of statute compounded is a crime punishable by imprisonment in the county jail or by a fine, or is a misdemeanor or violation of statute for which a pecuniary or other penalty or forfeiture is prescribed,

§ 6998. Compounding prosecution. Every person who takes any money or property of another or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, discontinue or delay any prosecution then pending for any crime or violation of statute, or to withhold any evidence in aid thereof, is guilty of a misdemeanor. § 185, Pen. C.

§ 6999. Attempting to intimidate officers. Every person who, directly or indirectly, utters or addresses any threat or intimidation to any judicial or ministerial officer, to any juror, referee, arbitrator, umpire or assessor or other person authorized by law to hear or determine any controversy, with intent to induce him either to any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, is guilty of a misdemeanor. § 186, Pen. C.

§ 7000. Suppressing evidence. Every person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper or other matter or thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other matter or thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor. § 187, Pen. C.

§ 7001. Buying lands in suit. Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor. § 188, Pen. C.

§ 7002. Buying pretended titles. Every person who buys or sells or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof or the person making such promise or covenant has been in possession, or he and those by whom he claims have been in possession of the same, or of the reversion and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor. § 189, Pen. C.

§ 7003. Does not prohibit mortgaging. The last two sections shall not be construed to prevent any person having a just title to lands, upon which there shall be an adverse possession, from executing a mortgage upon such lands. § 190, Pen. C.

§ 7004. Common barratry defined. Common barratry is the practice of exciting groundless judicial proceedings. § 191, Pen. C.

§ 7005. Misdemeanor. Common barratry is a misdemeanor. § 192, Pen. C.

- § 193, Pen. C. **§ 7006. Proof required.** No person can be convicted of common barratry, except upon proof that he has excited suits or proceedings at law, in at least three instances, and with a corrupt or malicious intent to vex and annoy.
- § 194, Pen. C. **§ 7007. Accused interested, not a defense.** Upon prosecution for common barratry, the fact that the accused was himself a party in interest or upon the record to any proceedings at law complained of, is not a defense.
- § 195, Pen. C. **§ 7008. Attorneys buying demands or suits.** Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.
- § 196, Pen. C. **§ 7009. Justice or constable buying same.** Every justice of the peace and every constable, who, directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, for the purpose of commencing any suit thereon before a justice, is guilty of a misdemeanor.
- § 197, Pen. C. **§ 7010. Loans on claims for collection.** Every attorney, justice of the peace or constable, who, directly or indirectly, lends or advances any money or property, or agrees for or procures any loan or advance, to any person, as a consideration for or inducement toward committing any evidence of debt or thing in action to such attorney, justice, constable or any other person, for collection, is guilty of a misdemeanor.
- § 198, Pen. C. **§ 7011. Forfeiture of office.** Every person convicted of a violation of either of the three preceding sections, in addition to the punishment by fine and imprisonment, prescribed therefor by this code, forfeits his office.
- § 199, Pen. C. **§ 7012. Receiving claims allowable.** Nothing in the four preceding sections shall be construed to prohibit the receiving in payment, of any evidence of debt or thing in action, for any estate, real or personal, or for any services of any attorney actually rendered, or for a debt antecedently contracted, or the buying or receiving of any evidence of debt or thing in action for the purpose of remittance, and without any intent to violate such sections.
- § 200, Pen. C. **§ 7013. Application of previous sections.** The provisions of sections 7008, 7010 and 7012 relative to the buying of claims by an attorney, with intent to prosecute them, or to the lending or advancing of money by an attorney in consideration of a claim being delivered for collection, shall apply to every case of such buying a claim, or lending or advancing money, by any person prosecuting a suit or demand in person.
- § 201, Pen. C. **§ 7014. Witnesses' privilege.** No person shall be excused from testifying in any civil action, to any fact showing that an evidence of debt or thing in action has been bought, sold or received contrary to law, upon the ground that his testimony might tend to convict him of a crime. But no evidence derived from the examination of such person shall be received against him upon any criminal prosecution.
- § 202, Pen. C. **§ 7015. Criminal contempts.** Every person guilty of any contempt of court of the following kinds, is guilty of a misdemeanor:
1. Disorderly, contemptuous or insolent behavior, committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

2. Behavior of the like character, committed in the presence of any referee or referees, while actually sitting for the trial of a cause, or upon any inquest or other proceeding authorized by law.

3. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7. The publication of a false or grossly inaccurate report of the proceedings of any court. But no person can be punished, as for contempt, in publishing a true, full and fair report of any trial, argument, decision or proceeding had in court.

§ 7016. Grand juror acting after challenge allowed. § 204, Pen. C.
Every grand juror who, with knowledge that a challenge interposed against him by a defendant, has been allowed, is present at or takes part, or attempts to take part, in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

§ 7017. Magistrate. Clerk disclosing deposition. § 205, Pen. C.
Every magistrate or clerk of any magistrate, who willfully permits any deposition taken on a complaint against or examination of a defendant before such magistrate and remaining in the custody of such magistrate or clerk, to be inspected by any person except a judge of a court having jurisdiction of the offense, the United States attorney, attorney general, state's attorney of the county and his assistants, and the defendant and his counsel, is guilty of a misdemeanor.

§ 7018. Clerk of court. Disclosing same. § 206, Pen. C.
Every clerk of any court who willfully permits any deposition returned by any grand jury with a presentment made by them, and filed with such clerk, to be inspected by any person except the court, the deputies or assistants of such clerk, and the state's attorney and his assistants, until after the arrest of the defendant, is guilty of a misdemeanor.

§ 7019. Fraudulent concealment. Disclosure. § 207, Pen. C.
Every person who, having been called upon by the lawful order of any court, to make a true exhibit of his real and personal effects, either:

1. Willfully conceals any of his estate or effects, or any books or writing relative thereto; or,

2. Willfully omits to disclose to the court any debts or demands which he has collected, or any transfer of his property which he had made after being ordered to make an exhibit thereof,

Is guilty of a misdemeanor.

§ 7020. Racing near court. § 208, Pen. C.
Every person concerned in any racing, running or other trial of speed between any horses or other animals, within one-half mile of the place where any court is actually sitting, is guilty of a misdemeanor.

§ 7021. Selling liquor in court house or jail. § 209, Pen. C.
Every person who sells any spiritous or intoxicating liquor within, or brings with intent to sell or offer or expose for sale therein, any such liquor into, either:

1. Any building established as a court house for the holding of courts of record, while any session of such court is being held therein: or,

2. Any building established as a jail or prison; or,

3. Any building or shed, out-house, porch, yard or curtilage appertaining to any building which, or any part of which, is at the time occupied or used for holding the polls at an election of any public officer of this state, or for canvassing votes cast at such election.

Is guilty of a misdemeanor.

§ 210, Pen. C. **§ 7022. Misconduct of attorneys.** Every attorney who, whether as attorney or as counselor, either:

1. Is guilty of any deceit or collusion or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit, with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for,

Is guilty of a misdemeanor; and in addition to the punishment prescribed therefor by this code, he forfeits to the party injured treble damages, to be recovered in a civil action.

§ 211, Pen. C. **§ 7023. Permitting name to be used.** If any attorney knowingly permits any person, not being his general law partner or a clerk in his office, to sue out any process or to prosecute or defend any action in his name, except as authorized by the next section, such attorney and every person who shall so use his name, is guilty of a misdemeanor.

§ 212, Pen. C. **§ 7024. Exception. In what case lawful.** Whenever an action or proceeding is authorized by law to be prosecuted or defended in the name of the state or of any public officer, board of officers or municipal corporation, on behalf of another party, the attorney general or state's attorney or attorney of such public officer or board or corporation may permit any proceeding therein to be taken in his name by an attorney to be chosen by the party in interest.

§ 213, Pen. C. **§ 7025. Pretense to birth of child.** Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate, from any person lawfully entitled thereto, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 214, Pen. C. **§ 7026. Substituting child.** Every person to whom an infant has been confided for nursing, education or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years.

§ 215, Pen. C. **§ 7027. Omission of duty by officer of vessel.** Every owner, master or commander of any vessel arriving from a port without this state, who knowingly lands, or permits to land, at any port, city or place within this state any passenger or hand who is a foreign convict of any crime which, if committed in this state, would be punishable therein, without giving notice thereof to the mayor of such city or other principal municipal officer of such place or port, is guilty of a misdemeanor.

§ 7028. Public officer. Duty omitted. Punishment. When § 216. Pen. C.
any duty is or shall be enjoined by law upon any public officer, or
upon any person holding any public trust or employment, every will-
ful omission to perform such duty when no special provisions shall
have been made for the punishment of such delinquency, is punish-
able as a misdemeanor.

§ 7029. Doing prohibited act. Punishment. When the § 217. Pen. C.
performance of an act is prohibited by any statute and no penalty for
the violation of such statute is imposed in any statute, the doing of
such act is a misdemeanor.

§ 7030. Disclosing presentment. Indictment. Every § 218. Pen. C.
grand juror, state's attorney, clerk, judge or other officer, who, except-
ing by the issuing or in the executing of a warrant to arrest the
defendant, willfully discloses the fact of a presentment or indictment
having been made for a felony, until the defendant has been arrested,
is guilty of a misdemeanor. am'd.

§ 7031. Disclosing jury's proceedings. Every grand juror, § 219. Pen. C.
who, except when required by a court, willfully discloses any evi-
dence adduced before the grand jury or anything which he himself or
any other member of the grand jury may have said, or in what man-
ner he or any other grand juror may have voted on a matter before
them, is guilty of a misdemeanor.

§ 7032. Action in a false name. Every person who mali- § 220. Pen. C.
ciously institutes or prosecutes any action or legal proceeding, or
makes or procures any arrest in the name of a person who does not
exist or has not consented that it be instituted or made, is guilty of a
misdemeanor.

§ 7033. Maliciously procuring search. Every person who § 221. Pen. C.
maliciously and without probable cause, procures a search warrant to
be issued and executed, is guilty of a misdemeanor.

§ 7034. Communicating with inmate of penitentiary. § 222. Pen. C.
Every person who, not being authorized by law or by consent of the
warden, deputy warden or other person in charge of the penitentiary,
communicates with any inmate of the penitentiary or brings into, or
conveys out of, the penitentiary any letter or printing, to or from
any such inmate, is guilty of a misdemeanor. am'd.

§ 7035. County Auditor. Neglect to canvass returns. § 223. Pen. C.
Every county auditor who willfully refuses or neglects to canvass the
election returns of his county, or neglects to make proper abstracts
thereof and forward the same to the proper officer, as is or may here-
after be provided by law, or fails to issue certificates of election to
the persons lawfully entitled thereto, is punishable by a fine not
exceeding one hundred dollars for each refusal or neglect.

§ 7036. False certificates. Every public officer who, being § 224. Pen. C.
authorized by law to make or give any certificate or other writing,
knowingly makes and delivers as true any such certificate or writing
containing any statement which he knows to be false, is guilty of a
misdemeanor.

CHAPTER 15.

CONSPIRACY.

§ 225, Pen. C.
am'd.

§ 7037. Criminal conspiracies defined. If two or more persons conspire, either:

1. To commit a crime; or,
2. Falsely and maliciously to indict another for a crime, or to procure another to be complained of or arrested for a crime; or,
3. Falsely to institute or maintain an action or special proceeding; or,
4. To cheat and defraud another out of property, by any means which are in themselves criminal or which, if executed, would amount to a cheat, or to obtain money or any other property by false pretenses; or,
5. To prevent another from exercising a lawful trade or calling or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements or property belonging to or used by another, or with the use or employment thereof; or,
6. To commit any act injurious to the public health, to public morals or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws; each of them is guilty of a misdemeanor.

§ 226, Pen. C.

§ 7038. Out of state, against peace of state. If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 7039. Limitation. Peaceable assemblies. No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

§ 227, Pen. C.

§ 7040. Overt act necessary. Exceptions. No agreement except to commit a felony upon the person of another, or to commit arson or burglary amounts to a conspiracy, unless some act beside such agreement is done to effect the object thereof, by one or more of the parties to such agreement.

§ 23, Const.

§ 7041. Hindering citizen to obtain employment. Every person, corporation, or agent thereof, who maliciously interferes or hinders, in any way, any citizen of this state from obtaining employment or enjoying employment already obtained, from any other person or corporation, is guilty of a misdemeanor.

§ 212, Const.

§ 7042. Black list. Punishment. Every corporation, officer, agent or employee thereof, and every person of any corporation on behalf of such corporation, who exchanges with or furnishes or delivers to any other corporation or any officer, agent, employee or person thereof, any "black list," is guilty of a misdemeanor.

CHAPTER 16.

TREASON AND MISPRISION OF TREASON.

§ 7043. **Treason defined. Witnesses. Punishment.** Every person owing allegiance to this state who levies war against it, or adheres to its enemies or gives them aid or comfort within this state or elsewhere, is guilty of treason. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or his confession thereof in open court. Every person guilty of treason shall, upon conviction thereof, be punished by death, or, at the discretion of the court, shall be imprisoned in the penitentiary not less than five years and be forever incapable of holding any office under this state. § 19, Const.

§ 7044. **Misprision of treason.** Every person owing allegiance to this state and having knowledge of any treason against it, who conceals and does not, as soon as may be, disclose the same and make the same known to the governor or the attorney general, or to some judge of this state or of some district thereof, or to the state's attorney of some county, or a magistrate thereof, is guilty of misprision of treason and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years.

CHAPTER 17.

SUICIDE.

§ 7045. **Suicide defined.** Suicide is the intentional taking of one's own life. § 22, Pen. C.

§ 7046. **Attempting suicide.** Every person who, with intent to take his own life, commits upon himself any act dangerous to human life, or which if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, is guilty of attempting suicide. § 24, Pen. C.

§ 7047. **Advising and aiding suicide.** Every person who willfully, in any manner, advises, encourages, abets or assists another person in taking his own life, is guilty of aiding suicide. § 24, Pen. C.

§ 7048. **Furnishing weapon or drug.** Every person who willfully furnishes another person with any deadly weapon or poisonous drug, knowing that such person intends to use such weapon or drug in taking his own life, is guilty of aiding suicide, if such person thereafter employs such instrument or drug in taking his own life. § 22, Pen. C.

§ 7049. **Aiding attempt.** Every person who willfully aids another in attempting to take his own life, in any manner which by the preceding sections would have amounted to aiding suicide if the person assisted had actually taken his own life, is guilty of aiding an attempt at suicide. § 23, Pen. C.

- § 234, Pen. C. **§ 7050. Incapacity, no defense.** It is no defense to a prosecution for aiding suicide or aiding an attempt at suicide, that the person who committed or attempted to commit the suicide was not a person deemed capable of committing crime.
- § 235, Pen. C. **§ 7051. Aiding suicide. Punishment.** Every person guilty of aiding suicide is punishable by imprisonment in the penitentiary not less than seven years.
- § 236, Pen. C. **§ 7052. Attempting suicide. Punishment.** Every person guilty of attempting suicide or of aiding an attempt at suicide, is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER 18.

HOMICIDE.

- § 237, Pen. C.
am'd. **§ 7053. Homicide defined.** Homicide is the destruction of the life of one human being by the act, agency, procurement or culpable omission of another.
- § 238, Pen. C. **§ 7054. Homicides classified.** Homicide is either:
1. Murder.
 2. Manslaughter.
 3. Excusable homicide; or,
 4. Justifiable homicide.
- § 239, Pen. C.
am'd. **§ 7055. Corpus delicti, how proved. Confession.** No person can be convicted of murder or manslaughter or of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused as alleged, are each established as independent facts; the former by direct proof and the latter beyond a reasonable doubt; but in no case upon a plea of not guilty, shall the confession or admission of the accused, in writing or otherwise, be admissible to establish the death of the person alleged to have been killed.
- § 240, Pen. C. **§ 7056. Petit treason abolished.** The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are deemed homicides, punishable in the manner prescribed by this chapter.
- § 241, Pen. C. **§ 7057. Confidential or domestic relation.** Whenever the grade or punishment of homicide is made to depend upon its having been committed under circumstances evincing a depraved mind or unusual cruelty or in a cruel manner, the jury may take into consideration the fact that any domestic or confidential relation existed between the accused and the person killed, in determining the moral quality of the acts proved.
- § 242, Pen. C. **§ 7058. Murder defined.** Homicide is murder in the following cases:
1. When perpetrated without authority of law, and with a pre-

meditated design to effect the death of the person killed or of any other human being.

2. When perpetrated by any act imminently dangerous to others and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual.

3. When perpetrated without any design to effect death by a person engaged in the commission of any felony.

§ 7059. **Felony used in last section defined.** The word "felony," in the last section imports any act or omission declared or defined to be a felony by any law of this state or by this code without regard to the effect thereon of the punishment actually imposed.

§ 7060. **Design to effect death inferred.** A design to effect death is inferred from the fact of killing, unless the circumstances raise a reasonable doubt whether such design existed. § 243, Pen. C.

§ 7061. **Premeditation.** A design to effect death sufficient to constitute murder, may be formed instantly before committing the act by which it is carried into execution. § 244, Pen. C.

§ 7062. **Anger or intoxication no defense.** Homicide committed with a design to effect death is not the less murder because the perpetrator was in a state of anger or voluntary intoxication at the time. § 245, Pen. C.

§ 7063. **Act imminently dangerous to others.** Homicide perpetrated by an act imminently dangerous to others and evincing a depraved mind regardless of human life, is not the less murder because there was no actual intent to injure others. § 246, Pen. C. am'd.

§ 7064. **Murder divided into two degrees.** According to the facts and circumstances attending the killing, or as specially declared by law, murder is deemed, either:

1. Murder in the first degree; or.
2. Murder in the second degree.

§ 7065. **Degrees of murder defined.** Every murder perpetrated by means of poison, or by lying in wait, or by torture, or by other willful, deliberate or premeditated killing, or in committing or attempting to commit any sodomy, rape, mayhem, arson, robbery or burglary, shall be deemed murder in the first degree; all other kinds of murder shall be deemed murder in the second degree.

§ 7066. **Manslaughter defined.** Homicide, not excusable or justifiable, but perpetrated in a manner not constituting murder, is manslaughter.

§ 7067. **Manslaughter divided into two degrees.** According to the facts and circumstances attending the killing, or as specially declared by law, manslaughter is, either:

1. Manslaughter in the first degree; or,
2. Manslaughter in the second degree.

§ 7068. **Punishment for murder in first degree.** Every person convicted of murder in the first degree shall suffer death or be imprisoned in the penitentiary for life. § 249, Pen. C. §§ 1, 2, c. 9, 1883. am'd.

§ 7069. **Punishment for murder in second degree.** Every person convicted of murder in the second degree shall be imprisoned in the penitentiary not less than ten and not exceeding thirty years.

§ 7070. **Punishment for manslaughter in first degree.** Every person convicted of manslaughter in the first degree shall be punished by imprisonment in the penitentiary not less than five and not exceeding fifteen years. § 253, Pen. C. am'd.

§ 261, Pen. C.
am'd.

§ 7071. Punishment for manslaughter in second degree.

Every person convicted of manslaughter in the second degree shall be punished by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 7072. Jury determines degree of murder. The jury before whom any person prosecuted for murder is tried, shall, if they find such person guilty thereof, determine by their verdict, whether it is of murder in the first degree or of murder in the second degree.

§§ 1, 2, c. 9, 1883.
am'd.

§ 7073. Jury must determine punishment. The jury before whom any person prosecuted for murder is tried, shall if they find such person guilty thereof, fix and determine by their verdict, the punishment to be inflicted, within the limits prescribed by law, as for example: if they find such person guilty of murder in the first degree, they must designate in their verdict whether he shall be punished by death or imprisonment in the penitentiary for life; or, if they find such person guilty of murder in the second degree, they must designate in their verdict the term of his imprisonment in the penitentiary not less than ten and not exceeding thirty years.

§ 7074. Court to enter judgment according to verdict. Exception. Whenever any person is convicted of murder by the verdict of a jury, it shall be the duty of the court to enter judgment against such person, in accordance with such verdict, or otherwise as provided by section 8247 of the code of criminal procedure.

§ 7075. Manslaughter. Jury. Degree. Punishment. Court. The jury before whom any person is prosecuted for murder, may, according to the facts and circumstances disclosed by the evidence, find such person guilty of manslaughter. Whenever the jury finds any person guilty of manslaughter, either upon a prosecution for murder or a prosecution for manslaughter, they shall determine by their verdict whether it is of manslaughter in the first degree or of manslaughter in the second degree, and shall also fix and determine by their verdict the punishment to be inflicted, within the limits prescribed by law, and it shall be the duty of the court to enter judgment against such person in accordance with such verdict, or otherwise as provided by section 8247 of the code of criminal procedure.

§ 7076. Murder. Manslaughter. Plea. Guilty. Court. Whenever any person prosecuted for murder or manslaughter pleads guilty, he shall, in his plea, designate whether he is guilty of murder in the first degree or in the second degree, or of manslaughter in the first degree or in the second degree, and the court shall, if said plea is accepted, determine the punishment to be inflicted therefor within the limits prescribed by law, and enter judgment against such person in accordance with such determination. But the court may, in its discretion, examine witnesses to aid in the determination of the punishment to be inflicted or submit the same to a jury to determine the punishment, or, at its discretion, may refuse to receive a plea of guilty and submit the whole case to a jury.

§ 7077. Treason. Murder. Death. Time of execution. Whenever the court or jury shall designate that a person convicted of treason or of murder in the first degree shall be punished by death, it shall be the duty of the court entering judgment to fix the day of the execution thereof, which day shall not be less than three months after

the day on which the judgment and sentence are entered and not longer than six months.

§ 7078. Duel. Killing in state. Murder. Second degree. Every person who by previous appointment or engagement fights a duel within the jurisdiction of this state and in so doing inflicts a wound upon any person, whereof the person so injured dies, is guilty of murder in the second degree.

§ 7079. Second, surgeon at duel. Manslaughter first degree. Every person who acts as a second or surgeon at any such duel as is mentioned in the preceding section and is present when the wound is inflicted whereof death ensues, is guilty of manslaughter in the first degree.

§ 7080. Duel. Killing without state, murder second degree. Every person, being an inhabitant or resident of this state, who, by previous appointment or engagement made within the same, fights a duel without the jurisdiction of this state, and in so doing inflicts a mortal wound upon a person, whereof he afterwards dies within this state, shall be deemed guilty of murder in the second degree within this state, and may be tried, convicted and sentenced in the county where the death happens. § 247, Pen. C. am'd.

§ 7081. Second, surgeon, at duel. Manslaughter first degree. Every person, being an inhabitant of this state, who acts as a second or surgeon at any such duel as is mentioned in the preceding section and is present when a wound is inflicted whereof death ensues, is guilty of manslaughter in the first degree.

§ 7082. Conviction. Acquittal in other state, defense. A person prosecuted under the last two preceding sections may plead a former conviction or acquittal of the same offense in any other state or country, and such plea, if admitted or established, shall be a bar to all further or other proceedings against him for the same offense within this state.

§ 7083. Homicide in forcibly taking mine. Murder. If any person or persons shall associate and agree to enter or attempt to enter by force of numbers, and the terror such numbers is calculated to inspire, or by force and violence, or by threats of violence against any person or persons in the actual possession of any lode, gulch or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons and all and each of them so entering or attempting to enter, shall be deemed guilty of murder in the second degree, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry or attempted entry, who shall be present and aiding, assisting or in anywise encouraging such entry or attempted entry, shall be deemed a principal in the commission of said offense. § 248, Pen. C. am'd.

§ 7084. Homicide, when manslaughter in first degree. § 250, Pen. C. Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor.

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon, unless it is committed under such circumstances as constitute excusable or justifiable homicide.

3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime or after such attempt shall have failed.

- § 251, Pen. C. **§ 7085. Abortion. Killing unborn quick child.** The willful killing of an unborn quick child by an injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree.
- § 252, Pen. C. **§ 7086. Abortion by administering drugs. Instruments.** Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug or substance whatever or who uses or employs any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, is guilty in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree.
- § 254, Pen. C. **§ 7087. Manslaughter in second degree defined.** Every killing of one human being by the act, agency, procurement or culpable negligence of another, which, under the provisions of this chapter, is not murder nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.
- § 255, Pen. C. **§ 7088. Owner of mischievous animal.** If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances permitted, to avoid such animal, the owner is deemed guilty of manslaughter in the second degree.
- § 256, Pen. C. **§ 7089. Negligently navigating vessel. Overloading.** Every person navigating any vessel for gain who willfully or negligently receives so many passengers or such a quantity of other lading on board such vessel that by means thereof such vessel sinks, or is upset or injured, and thereby any human being is drowned or otherwise killed, is guilty of manslaughter in the second degree.
- § 257, Pen. C. **§ 7090. Steamboat. Passengers. Negligence. Racing.** Every captain or other person having charge of any steamboat used for the conveyance of passengers or of the boilers or engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created, such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated or any apparatus or machinery connected therewith, by which bursting or breaking any person is killed, is deemed guilty of manslaughter in the second degree.
- § 258, Pen. C. **§ 7091. Engineer. Negligence. Producing death.** Every engineer or other person having charge of any steam boiler, steam engine or other apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect creates or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of manslaughter in the second degree.
- § 259, Pen. C. **§ 7092. Physician. Intoxication. Producing death.** Every physician who, being in a state of intoxication, without a design to effect death, administers any poison, drug or medicine, or does any other act as such physician, to another person, which produces the death of such other person, is guilty of manslaughter in the second degree.

§ 7093. Keeping gunpowder. Other explosives. Every person guilty of making or keeping gunpowder, saltpeter, guncotton, nitroglycerine or dynamite or any compound of the same, or any fulminate or substance which is intended to be used by exploding or igniting the same, in order to produce a force to propel missiles or to rend apart substances, within any city or village, in any quantity or amount prohibited by law, or by any ordinance of said city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter in the second degree. § 280, Pen. C. am'd.

§ 7094. Setting spring gun, trap or device. Every person who sets any spring or other gun or trap or device operating by the firing or exploding of gunpowder or any other explosive, and leaves or permits the same to be left, except in the immediate presence of some competent person, shall be deemed to have committed a misdemeanor; and the killing of any person by the firing of a gun or other device so set shall be deemed to be manslaughter in the first degree.

§ 7095. Arson. Night time. Destroying life. Every person who willfully and maliciously burns, in the night time, the dwelling house of another or of which he is a lessee or tenant, whereby the life of any person is destroyed, or who, in the night time, willfully and maliciously sets fire to any other building, owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, whereby the life of any person is destroyed, shall be deemed guilty of murder in the second degree.

§ 7096. Killing. Death within one year. Aiding suicide. To make the killing either murder or manslaughter in prosecutions for homicide, it is requisite that the party dies within a year and a day after the stroke received or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first. No prosecution for aiding suicide shall be maintained unless the death of the person aided ensues within one year, computed as above.

§ 7097. Homicide, when excusable. Homicide is excusable § 282, Pen. C. in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant or in doing any other lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent.

2. When committed by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation or upon a sudden combat; provided, that no undue advantage is taken, nor any dangerous weapon used and that the killing is not done in a cruel or unusual manner.

§ 7098. Homicide by officers, when justifiable. Homicide § 283, Pen. C. is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice.

§ 264. Pen. C. **§ 7099. Homicide by others, when justifiable.** Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person or to commit any felony upon him or her, or upon or in any dwelling house in which such person is; or,

2. When committed in the lawful defense of such person or of his or her husband, wife, parent, child, master, mistress or servant, when there is a reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and imminent danger of such design being accomplished; or,

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

§ 7100. Homicide. Excusable. Justifiable. Defendant acquitted. Whenever any person is prosecuted for a homicide, and upon his trial the killing shall be found to have been excusable or justifiable, the jury shall find such person not guilty and he shall be fully acquitted and discharged.

CHAPTER 19.

MAIMING.

§ 265. Pen. C. **§ 7101. Maiming defined.** Every person who, with premeditated design to injure another, inflicts upon his person any injury which disfigures his personal appearance or disables any member or organ of his body or seriously diminishes his physical vigor, is guilty of maiming.

§ 266. Pen. C. **§ 7102. Maiming one's self.** Every person who, with design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming.

§ 267. Pen. C. **§ 7103. Maiming one's self. Exciting sympathy.** Every person who inflicts upon himself any injury such as if inflicted upon another would constitute maiming, with intent to avail himself of such injury, to excite sympathy or to obtain alms or any charitable relief, is guilty of maiming.

§ 268. Pen. C. **§ 7104. Maiming. Instrument. Manner immaterial.** To constitute maiming it is immaterial by what means or instrument, or in what manner the injury was inflicted.

§ 269. Pen. C. **§ 7105. Maiming by disfigurement described. Limited.** To constitute maiming by disfigurement the injury must be such as is calculated, after healing, to attract observation. A disfigurement which can only be discovered by close inspection does not constitute maiming.

§ 270. Pen. C. **§ 7106. Design to maim inferred.** A design to injure, disfigure or disable, is inferred from the fact of inflicting an injury

which is calculated to disfigure or disable, unless the circumstances raise a reasonable doubt whether such design existed.

§ 7107. **Premeditated design sufficient.** A premeditated design to injure, disfigure or disable, sufficient to constitute maiming, may be formed instantly before inflicting the wound. § 271, Pen. C.

§ 7108. **Subsequent recovery. Conviction.** When it appears, upon a trial for maiming another person, that the person injured has, before the time of trial, so far recovered from the wound that he is no longer by it disfigured in personal appearance, or disabled in any member or organ of his body or affected in physical vigor, no conviction for maiming shall be had; but the accused may be convicted of assault and battery, with or without a special intent, according to the proof. § 272, Pen. C.

§ 7109. **Punishment for maiming.** Every person guilty of maiming is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. § 273, Pen. C.

CHAPTER 20.

KIDNAPING.

§ 7110. **Kidnaping defined. Defense. Exception.** Every person who, without lawful authority, forcibly seizes and confines another or inveigles or kidnaps another, with intent, either: § 274, Pen. C.

1. To cause such other person to be secretly confined or imprisoned in this state against his will; or,

2. To cause such other person to be sent out of this state against his will; or,

3. To cause such person to be sold as a slave or in any way held to service against his will,

Is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. Upon any trial for a violation of this section, the consent thereto of the person kidnaped or confined shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of twelve years, and that such consent was not extorted by threat or by duress.

§ 7111. **Selling services of other persons.** Every person who, within this state or elsewhere, sells or in any manner transfers, for any term, the services or labor of any black, mulatto or other person of color, who has been forcibly taken or inveigled or kidnaped from his state, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. § 275, Pen. C.

§ 7112. **Removing from state persons held to service.** Every person claiming that he or another is entitled to the service of a person alleged to be held to labor or service in a state or territory of the United States who, except as authorized by law, takes or removes § 276, Pen. C.

or willfully does any act tending toward removing from this state any such person, is guilty of felony, and punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, and by a penalty of five hundred dollars, recoverable in a civil action by the party aggrieved.

§ 277, Pen. C.

§ 7113. Judge. Officer. Warrant. Exception. Penalty.

Every judge or other public officer of this state, who grants or issues any warrant, certificate or other process in any proceeding for the removal from this state of any person claimed as held to labor or service in a state or territory of the United States, except in pursuance of positive enactment, is guilty of a misdemeanor; and in addition to the punishment therefor prescribed by law, he forfeits five hundred dollars to the party aggrieved, recoverable in a civil action.

CHAPTER 21.

ATTEMPTS TO KILL.

§ 278, Pen. C.

§ 7114. Administering poison. Every person who, with intent to kill, administers or causes or procures to be administered to another, any poison, which is actually taken by such other, but by which death is not caused, is punishable by imprisonment in the penitentiary not less than ten years.

§ 279, Pen. C.
am'd.

§ 7115. Shooting. Assault. Deadly weapon. Every person who shoots or attempts to shoot at another, with any kind of firearm, air gun or other means whatever with intent to kill any person, or who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as was likely to produce death, with intent to kill any other person, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 280, Pen. C.

§ 7116. Other assaults with intent to kill. Every person who is guilty of an assault with intent to kill any person, the punishment for which is not prescribed by the foregoing section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER 22.

ROBBERY.

§ 281, Pen. C.

§ 7117. Robbery defined. Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear.

§ 7118. **How force or fear employed.** To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery. § 282, Pen. C.

§ 7119. **Degree of force immaterial.** When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial. § 283, Pen. C.

§ 7120. **What fear necessary, described.** The fear which constitutes robbery may be either: § 284, Pen. C.

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed, or of any relative of his or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed, at the time of the robbery.

§ 7121. **Value of property taken immaterial.** When property is taken under the circumstances required to constitute robbery, the fact that the property was of trifling value does not qualify the offense. § 285, Pen. C.

§ 7122. **Taking secretly not robbery.** The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge. § 286, Pen. C.

§ 7123. **Two degrees of robbery, defined.** Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree. When accomplished in any other manner, it is robbery in the second degree. § 287, Pen. C.

§ 7124. **Punishment robbery, first degree.** Every person guilty of robbery in the first degree is punishable by imprisonment in the penitentiary not less than one year. § 288, Pen. C. am'd.

§ 7125. **Punishment robbery, second degree.** Every person guilty of robbery in the second degree is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years. § 289, Pen. C. am'd.

§ 7126. **Robbery by two or more conjointly.** Whenever two or more persons conjointly commit a robbery, or when the whole number of persons conjointly committing a robbery and persons present and aiding such robbery, amount to two or more, each and either of such persons is punishable by imprisonment in the penitentiary not less than one year. § 290, Pen. C. am'd.

CHAPTER 23.

ASSAULTS WITH INTENT TO COMMIT FELONY OTHER THAN ASSAULTS WITH INTENT TO KILL.

§ 7127. **Shooting. Assault. Deadly weapon. Punishment.** Every person who shoots or attempts to shoot at another with any kind of firearm, air gun or other means whatever, or commits any assault or battery upon another by means of any deadly § 291, Pen. C.

weapon, or by such other means or force as was likely to produce death, with intent to commit any felony other than assault with intent to kill, or in resisting the execution of any legal process, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 292, Pen. C.
am'd.

§ 7128. Other assaults. Intent. Exception. Punishment. Every person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 293, Pen. C.

§ 7129. Administering drugs. Intent. Felony. Every person guilty of administering to another any chloroform, ether, laudanum or other intoxicating, narcotic or other anesthetic agent, with intent thereby to enable or assist himself or any other person to commit any felony, is guilty of felony.

CHAPTER 24.

DUELS AND CHALLENGES.

§ 294, Pen. C.

§ 7130. Duel defined. A duel is any combat with deadly weapons, fought between two persons by previous agreement or upon a previous quarrel.

§ 295, Pen. C.

§ 7131. Punishment for fighting. Every person guilty of fighting any duel, although no death or wound ensues, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 296, Pen. C.

§ 7132. Incapacity to hold office. Every person convicted of fighting a duel is thereafter incapable of holding or being elected or appointed to any office, place or post of trust or emolument, civil or military, under this state.

§ 297, Pen. C.

§ 7133. Seconds. Aids. Surgeons. Every person who is present at the time when any duel is fought, either as second, aid or surgeon, or who advises or gives any countenance to any duel, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years.

§ 298, Pen. C.

§ 7134. Challenges. Punishment. Every person who challenges another to fight a duel; every person who accepts any such challenge; and every person who knowingly forwards, carries or delivers any such challenge, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years.

§ 299, Pen. C.

§ 7135. Challenge defined. Any words, spoken or written, or any signs uttered or made to any person, expressing or implying or intended to express or imply a desire, request, invitation or demand, to fight a duel, or to meet for the purpose of fighting a duel, are deemed a challenge.

§ 7136. **Attempts to induce challenge.** Every person guilty of sending, uttering or making to another any words or signs whatever, with intent to provoke or induce such person to give or receive any challenge to fight a duel, is guilty of a misdemeanor. § 300, Pen. C.

§ 7137. **Posting for not fighting.** Every person who posts or publishes another for not fighting a duel or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another for not sending or accepting a challenge to fight a duel or with intent to provoke a duel, is guilty of a misdemeanor. § 301, Pen. C.

§ 7138. **Leaving state to evade laws.** Every person who leaves this state with intent to evade any of the provisions of this chapter and to commit any act out of the state such as is prohibited by this chapter, and who does any act although out of this state which would be punishable by said provisions, if committed within this state, is punishable in the same manner as he would have been, in case such act had been committed within this state. § 302, Pen. C.

§ 7139. **Where may be tried.** Such person may be prosecuted, informed against or indicted and tried in any county within this state. § 303, Pen. C.

§ 7140. **No privilege against testifying.** No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding. § 304, Pen. C.

CHAPTER 25.

ASSAULT AND BATTERY.

§ 7141. **Assault defined.** An assault is any willful and unlawful attempt or offer, with force or violence, to do a corporal hurt to another. § 305, Pen. C.

§ 7142. **Battery defined.** A battery is any willful and unlawful use of force or violence upon the person of another. § 306, Pen. C.

§ 7143. **When force not unlawful.** To use or to attempt or to offer to use force or violence upon or toward the person of another is not unlawful in the following cases: § 307, Pen. C.
am'd.

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.

2. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlaw-

ful interference with real or personal property in his lawful possession; provided, the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice or scholar; provided, restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them, at their request, in expelling from any carriage, railroad car, vessel or other vehicle, any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person preventing an idiot, lunatic, insane person or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

§ 308, Pen. C.

§ 7144. How punished. Assault or assault and battery shall be punishable by imprisonment in a county jail not exceeding thirty days, or by a fine of not less than five dollars nor more than one hundred dollars or both at the discretion of the court.

§ 309, Pen. C.

§ 7145. Assault with dangerous weapon. Every person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault or assault and battery upon the person of another, with any sharp or dangerous weapon, or who without such cause, shoots or attempts to shoot at another, with any kind of firearm or air gun or other means whatever, with intent to injure any person, although without intent to kill such person or to commit any felony, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in a county jail not exceeding one year.

CHAPTER 26.

LIBEL.

§ 7146. **Defined.** Any malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person or the memory of any person deceased, to hatred, contempt, ridicule or obloquy, or which causes or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation, is a libel. § 310. Pen. C. am'd.

§ 7147. **Is misdemeanor.** Every person who publishes a libel, is guilty of a misdemeanor. § 311. Pen. C.

§ 7148. **Presumption of malice.** A publication having the tendency or effect, mentioned in section 7146 is to be deemed malicious, if no justification or excuse therefor is shown. The publication is justified when the matter charged as libelous is true and was published with good motives and for justifiable ends. The publication is excused when it is honestly made, in the belief of its truth and upon reasonable grounds for belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public. §§ 312, 313. Pen. C. am'd.

§ 7149. **Publication of libel defined.** To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been read or seen by another. It is enough that the accused knowingly displayed it, or parted with its immediate custody under circumstances which exposed it to be read or seen or understood by another person than himself. § 314. Pen. C. am'd.

§ 7150. **Liability of editors and others.** Every editor or proprietor of a book, newspaper or serial publication, and every manager of a partnership or incorporated association, by which a book, newspaper or serial publication is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution for libel the accused may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes, by another who had no authority from him to make the publication, and whose act was disavowed by him as soon as known. § 315. Pen. C. am'd.

§ 7151. **Publishing true report of public official proceedings.** A prosecution for libel cannot be maintained against a reporter, editor, publisher or proprietor of a newspaper, for the publication therein, of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. § 316. Pen. C. am'd.

§ 7152. **Qualification of last section.** The last section does not apply to a libel contained in the heading of the report, or in any other matter added by any other person concerned in the publication, or in the report of anything said or done at the time and place of the public and official proceeding, which was not a part thereof. § 317. Pen. C. am'd.

§ 7153. **Other privileged communications.** A communication made to a person entitled to or interested in the communication, § 318. Pen. C. am'd.

by one who was also entitled to or interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is called a privileged communication.

§ 319, Pen. C.
am'd.

§ 7154. Threatening to publish libel. Every person who threatens another with the publication of a libel, concerning the latter or concerning any parent, husband, wife, child or other member of the family of the latter, and a person who offers to prevent the publication of a libel upon another person upon the condition of the payment of, or with intent to extort money or other valuable consideration from any person, is guilty of a misdemeanor.

§ 7155. Furnishing libelous information. Every person who willfully states, delivers or transmits by any means whatever to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which if published therein would be a libel, is guilty of a misdemeanor.

CHAPTER 27.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN AND SEDUCTION.

§ 320, Pen. C.
am'd.

§ 7156. Rape defined. Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. When the female is under the age of sixteen years.
2. When she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. When she resists, but her resistance is overcome by force or violence.
4. When she is prevented from resisting, by threats of immediate and great bodily harm, accompanied by apparent power of execution.
5. When she is prevented from resisting by any intoxicating, narcotic or anesthetic agent, administered by or with the privity of the accused.
6. When she is at the time unconscious of the nature of the act, and this is known to the accused.
7. When she submits under a belief that the person committing the act is her husband, and this belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

§ 321, Pen. C.

§ 7157. Accused under fourteen. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact and beyond a reasonable doubt.

§ 7158. **When crime complete.** The essential guilt of rape § 322, Pen. C.
consists in the outrage to the person and feeling of the female. Any
sexual penetration, however slight, is sufficient to complete the crime.

§ 7159. **Rape in first degree defined.** Rape committed upon § 323, Pen. C.
a female under the age of ten years, or incapable, through lunacy or
any other unsoundness of mind, of giving legal consent, or accom-
plished by means of force overcoming her resistance, is rape in the
first degree.

§ 7160. **Rape in second degree defined.** In all other cases § 324, Pen. C.
rape is of the second degree; but no conviction can be had in case
the female is over the age of ten years and the male under the age of
twenty years at the time of the act of intercourse, and it appears to
the satisfaction of the jury that the female was sufficiently matured
and informed to understand the nature of the act and consented
thereto.

§ 7161. **Punishment for first degree.** Rape in the first § 325, Pen. C.
degree is punishable by imprisonment in the penitentiary not less
than ten years.

§ 7162. **Punishment for second degree.** Rape in the sec- § 326, Pen. C.
ond degree is punishable by imprisonment in the penitentiary not
less than five years.

§ 7163. **Compelling woman to marry.** Every person who § 327, Pen. C.
takes any woman against her will, and by force, menace or duress,
compels her to marry him or to marry any other person, is punishable
by imprisonment in the penitentiary not less than ten years.

§ 7164. **Intent to compel marriage or defilement.** Every § 328, Pen. C.
person who takes any woman unlawfully against her will, with the
intent to compel her by force, menace or duress to marry him, or to
marry any other person, or to be defiled, is punishable by impris-
onment in the penitentiary not less than one and not exceeding ten
years.

§ 7165. **Inveigling into house of prostitution.** Every per- § 329, Pen. C.
son who inveigles or entices any unmarried female of previous chaste
character under the age of twenty years, into any house of ill fame
or of assignation or elsewhere, for the purpose of prostitution, and
every person who aids or assists in such abduction for such purpose,
is punishable by imprisonment in the penitentiary not less than one
and not exceeding five years, or by imprisonment in the county jail
not exceeding one year, or by a fine not exceeding one thousand dol-
lars, or by both such fine and imprisonment.

§ 7166. **Abduction for prostitution.** Every person who § 330, Pen. C.
takes away any female under the age of eighteen years, from her
father, mother, guardian or other person having the legal charge of her
person, without the consent of such father, mother, guardian or other
person having the legal charge of her person, either for the purpose of
concubinage or prostitution, is punishable by imprisonment in the
penitentiary not less than one and not exceeding five years, or in the
county jail not exceeding one year, or by fine not exceeding one
thousand dollars, or by both.

§ 7167. **Seduction under promise of marriage.** Every male § 331, Pen. C.
person over twenty-one years of age who, under promise of marriage,
seduces and has illicit connection with an unmarried female under
twenty years of age and of previous chaste character, is punishable

by imprisonment in the penitentiary not less than one and not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 332, Pen. C.
am'd.

§ 7168. Subsequent marriage or offer of. If the parties marry each other at any time before the conviction of the defendant, no prosecution shall take place, or, if begun, it shall be dismissed, or if the defendant, at any time after the illicit connection and before the case is submitted to the jury, in good faith offers to marry the female seduced and the jury so finds from the evidence, the defendant must be acquitted. But the benefits of this section shall not apply to a defendant who was in fact married at the time of committing the offense; provided, that no person who was married at the time of committing the offense, and the fact of the marriage was known to the female shall be held liable for the offense defined in section 7167.

CHAPTER 28.

ADULTERY AND UNLAWFUL COHABITATION.

§ 333, Pen. C.
am'd.

§ 7169. Adultery defined. Limitation. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife and when the intercourse is between a married woman and a man that is unmarried the man is also guilty of adultery. No prosecution for adultery shall be commenced except on the complaint of the husband or of the wife, and no such prosecution shall be commenced after one year from the time of the committing of the offense.

§ 334, Pen. C.
am'd.

§ 7170. How punished. Every person convicted of the crime of adultery is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

§ 16, c. 91, 1890.
am'd.

§ 7171. Unlawful cohabitation. Punishment. Every person who lives openly and notoriously and cohabits as husband or wife with a person of the opposite sex without being married to such person, is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment in the county jail not less than thirty days and not exceeding one year, or by a fine of not less than one hundred and not exceeding five hundred dollars.

CHAPTER 29.

ABANDONMENT AND NEGLECT OF CHILD OR WIFE.

§ 7172. Abandoning under six years. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years, or in a county jail not exceeding one year. § 335, Pen. C.

§ 7173. Parent omitting to provide for child. Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law to furnish necessary food, clothing, shelter or medical attendance for such child, is guilty of a misdemeanor. § 336, Pen. C.

§ 7174. Abandoning or refusing to support minor child. Every person who, either: § 1, c. 168, 1890. am'd.

1. Willfully abandons and leaves his minor child in a destitute condition; or who,

2. Is of sufficient ability to provide such child's support; or,

3. Is able to earn the means of such child's support, unreasonably refuses or neglects to provide for such minor child,

Is guilty of a misdemeanor.

§ 7175. Abandoning or refusing to support wife. Every husband who, either: § 1, c. 168, 1890. am'd.

1. Willfully abandons and leaves his wife in a destitute condition; or,

2. Is of sufficient ability to provide such wife's support; or,

3. Is able to earn the means of such wife's support, unreasonably refuses or neglects to provide for such wife,

Is guilty of a misdemeanor.

§ 7176. Punishment. Every person convicted of any of the offenses mentioned in the two last sections is punishable by imprisonment in the county jail not less than thirty days and not exceeding six months. § 1, c. 168, 1890. am'd.

CHAPTER 30.

ABORTION AND CONCEALING DEATH OF CHILDREN.

§ 7177. Procuring an abortion. Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year. § 337, Pen. C.

§ 338. Pen. C.

§ 7178. Soliciting or submitting to attempt at. Every woman who solicits of any person any medicine, drug or substance whatever and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 339. Pen. C.

§ 7179. Concealing still birth or death of bastard. Every woman who endeavors either by herself or by the aid of others to conceal the still birth of an issue of her body, which if born alive would be a bastard, or the death of any such issue under the age of two years, is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

CHAPTER 31.

CHILD STEALING.

§ 340. Pen. C.

§ 7180. Defined. Punishment. Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

CHAPTER 32.

BIGAMY, INCEST AND SODOMY.

§ 341. Pen. C.

§ 7181. Bigamy defined. Every person who, having been married to another who remains living, marries any other person, except in the cases specified in the next section, is guilty of bigamy.

§ 342. Pen. C.
am'd.

§ 7182. Exception to last section. The last section does not extend:

1. To any person by reason of any former marriage, whose husband or wife has been absent for five successive years without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage, whose husband or wife by such marriage has absented himself or herself from his wife or her husband and has been continually remaining without the United States for the space of five years together; nor,

3. To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court; nor,

4. To any person by reason of any former marriage with a husband or wife who has been sentenced to imprisonment for life.

§ 7183 Punishment for bigamy. Every person guilty of bigamy is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. § 343, Pen. C.

§ 7184. Unlawful marriages defined. Every person who knowingly marries the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. § 344, Pen. C.

§ 7185. Incest defined. Persons who, being within the degrees of consanguinity within which marriages are, by the laws of this state, declared incestuous and void, intermarry, cohabit or have sexual intercourse with such other so related person, knowing him or her to be within said degree of relationship shall be deemed guilty of incest, and upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years. § 345, Pen. C.

§ 7186. Sodomy defined. Every person who carnally knows in any manner any animal or bird; or carnally knows any male or female person by the anus or by or with the mouth; or voluntarily submits to such carnal knowledge; or attempts sexual intercourse with a dead body, is guilty of sodomy and is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years or in the county jail not more than one year. § 346, Pen. C. am'd.

§ 7187. When crime complete. Any sexual penetration, however slight, is sufficient to complete the crime specified in the last section. § 347, Pen. C. am'd.

CHAPTER 33.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

§ 7188. Right to dispose of one's own body. Every person has the right to direct the manner in which his body shall be disposed of after his death, and to direct the manner in which any part of his body which becomes separated therefrom during his lifetime shall be disposed of. The provisions of this chapter do not apply where such person has given directions for the disposal of his body or any part thereof inconsistent with these provisions. § 348, Pen. C.

§ 7189. Duty of burial. Except in the cases in which a right to dissect a dead body is expressly conferred by law, every dead body of a human being lying within this state must be decently buried within a reasonable time after the death. § 349, Pen. C.

- § 350, Pen. C. **§ 7190. Right to transport dead body.** The last section does not affect the right to carry the dead body of a human being through this state or to remove from this state the body of a person dying within it, for the purpose of burying the same in another state or territory.
- § 351, Pen. C. **§ 7191. Dissection, when allowed.** The right to dissect the dead body of a human being exists in the following cases:
1. In the cases authorized by positive enactment of the legislative assembly of this state.
 2. Whenever the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body, and a coroner authorizes such dissection for the purposes of the inquest.
 3. Whenever any husband or next of kin of a deceased person, being charged by law with the duty of burial, authorizes such dissection for the purpose of ascertaining the cause of death.
- § 352, Pen. C. **§ 7192. Unlawful dissection, misdemeanor.** Every person who makes or procures to be made any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a misdemeanor.
- § 353, Pen. C. **§ 7193. Remains after dissection.** In all cases in which a dissection has been made, the provisions of this chapter requiring the burial of a dead body, and punishing interference with or injuries to a dead body, apply equally to the remains of the body dissected, as soon as the lawful purposes of such dissection have been accomplished.
- § 354, Pen. C. **§ 7194. Dead limb or member of body.** All provisions of this chapter requiring the burial of a dead body or punishing interference with or injuries to a dead body apply equally to any dead limb or member of a human body, separated therefrom during life-time.
- § 355, Pen. C. **§ 7195. Whose duty to bury.** The duty of burying the body of a deceased person devolves upon the persons hereinafter specified:
1. If the deceased was a married woman, the duty of burial devolves upon her husband.
 2. If the deceased was not a married woman but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age and within this state, and possessed of sufficient means to defray the necessary expenses.
 3. If the deceased left no husband nor kindred, answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if none, then upon the persons charged with the support of the poor in the locality in which the death occurs.
 4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant, or, if there is no tenant, upon the owner of the premises or master, or, if there is no master, upon the owner of the vessel in which the death occurs or the body is found.
- § 356, Pen. C. **§ 7196. Neglect of burial, misdemeanor.** Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to pay to the person perform-

ing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

§ 7197. Who entitled to custody of body. The person § 357, Pen. C. charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

§ 7198. Unlawful removal of dead body. Every person § 358, Pen. C. who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it without the authority of law, or from malice or wantonness, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 7199. Purchasing body forbidden. Every person § 359, Pen. C. who purchases or who receives, except for the purpose of burial, any dead body of a human being, knowing that the same has been removed contrary to the last section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 7200. Unlawfully opening place of burial. Every person § 360, Pen. C. who opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either:

1. To remove any dead body of a human being for the purpose of selling the same or for the purpose of dissection; or,
2. To steal the coffin, or any part thereof or anything attached thereto or connected therewith, or the vestments or other articles buried with the same,

Is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or in a county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 7201. When body removable from cemetery. When § 361, Pen. C. ever a cemetery or other place of burial is lawfully authorized to be removed from one place to another, the right and duty to disinter, remove and rebury the remains of bodies there lying buried, devolves upon the persons named in section 7195, in the order in which they are named, and if they all fail to act, then upon the lawful custodians of the place of burial so removed. Every omission of such duty is punishable in the same manner as other omissions to perform the duty of making burial are made punishable by section 7196.

§ 7202. Arresting or attaching dead body. Every person § 362, Pen. C. who arrests or attaches any dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand or upon any pretended lien or charge, is guilty of a misdemeanor.

§ 7203. Disturbing funerals. Every person who willfully § 363, Pen. C. disturbs, interrupts or disquiets any assemblage of people met for the purpose of any funeral, or who, without authority of law, obstructs or

detains any persons engaged in carrying or accompanying any dead body of a human being to a place of burial, is guilty of a misdemeanor.

§ 364, Pen. C.

§ 7204. Injury to cemetery or tomb. Every person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone or other structure placed in any cemetery or private burying ground, or any fence, railing or other work for the protection or ornament of such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, or memorial or other structure aforesaid, or of any lot within a cemetery, or shall willfully destroy, cut, break or injure any tree, shrub or plant, within the limits thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punishable by a fine of not less than five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

§ 365, Pen. C.

§ 7205. Other laws against dissection. Every person who violates any provision of any enactment of the legislative assembly of this state now in force or that hereafter may be enacted, not provided for in this code relative to dissection, is guilty of a misdemeanor.

CHAPTER 34.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS, BOOKS AND PRINTS, AND BAWDY AND OTHER DISORDERLY HOUSES.

§ 366, Pen. C.

§ 7206. Indecent exposure. Exhibitions. Pictures. Every person who willfully and lewdly, either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels or assists any person so to expose himself, or to take any part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes or composes, stereotypes, prints, publishes, sells, distributes or keeps for sale, or exhibits any obscene or indecent writing, paper or book, or designs or copies, draws or engraves, paints or otherwise prepares any obscene or indecent picture or print of any description, or molds, cuts, casts or otherwise makes any obscene or indecent figure or form,

Is guilty of a misdemeanor.

§ 367, Pen. C.

§ 7207. Seizure of indecent articles. Every person who is authorized or enjoined to arrest any person for a violation of subdivision 3 of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print or figure found in possession or under the control of the person so

arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 7208. **Summary disposition of same.** The magistrate to whom any obscene or indecent writing, paper, book, picture, print or figure is delivered pursuant to the foregoing section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print or figure, and if he finds it to be obscene or indecent, he shall cause the same to be destroyed or to be delivered to the state's attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. But not more than two copies of any one writing, paper, book, picture, print or figure, shall be delivered to the state's attorney. § 368, Pen. C.

§ 7209. **Articles to be destroyed.** Upon the conviction of the accused, such state's attorney shall cause any writing, paper, book, picture, print or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such state's attorney, to be destroyed. § 369, Pen. C.

§ 7210. **Keeping bawdy house.** Every person who keeps any bawdy house, house of ill fame, of assignation or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse or for any other lewd, obscene or indecent purpose, is guilty of a misdemeanor. § 370, Pen. C.

§ 7211. **Disorderly house.** Every person who keeps any disorderly house or any house of public resort by which the peace, comfort or decency of the immediate neighborhood is habitually disturbed, is guilty of a misdemeanor. § 371, Pen. C.

§ 7212. **Letting building for unlawful purposes.** Every person who lets any building or portion of any building knowing that it is intended to be used for any purpose declared punishable by this chapter, or who otherwise permits any building or portion of a building to be so used, is guilty of a misdemeanor. § 372, Pen. C.

CHAPTER 35.

SALE OF OBSCENE LITERATURE TO MINORS.

§ 7213. **Delivery of obscene literature to children.** Every person who, either: §§ 1, 2, 3, c. 103, 1890, am'd.

1. Sells, lends, gives away or shows to a child; or,
2. Has in his possession with intent to sell, lend, give away or show to a child; or,
3. Advertises or otherwise offers for loan, gift or distribution to a child; or,
4. Exhibits upon any street or highway or in any place within the view of a child; or,
5. Hires, uses or employs a child to sell, give away or in any manner to distribute; or,

6. Having the care, custody or control of a child, permits such child to sell, give away or in any manner to distribute:

Any work, pamphlet, magazine, newspaper, story paper or other print or publication devoted to the dissemination or principally made up of criminal news, police reports or accounts of criminal deeds, or pictures and accounts or stories of deeds of bloodshed, lust or crime, is guilty of a misdemeanor.

§ 3, c. 103, 1890.
am'd.

§ 7214. Same. Punishment. Every person convicted of any of the offenses mentioned in the last section is punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding five hundred dollars, or both.

§ 1, c. 84, 1895.

§ 7215. Bringing obscene literature into state. Every person who shall bring or cause to be brought into the state, or shall buy, sell or cause to be sold, or shall advertise, lend, give away, offer, show or exhibit, or shall have in his possession with intent to sell, lend, give away, offer, show, exhibit, distribute or cause to be distributed, or shall design, copy, draw, photograph, print, etch or engrave, cut, carve, make, publish or otherwise prepare or assist in preparing, or shall receive subscriptions for any indecent or obscene book, pamphlet, paper, picture, print, drawing, figure, image or other engraved, printed or written matter, or any article or instrument of immoral use, or any book, pamphlet, magazine or other paper devoted principally or wholly to the publication of criminal news or pictures or stories of deeds of bloodshed or crime, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars and not more than one hundred dollars, or be imprisoned in a county jail not to exceed thirty days, or by both such fine and imprisonment.

§ 7216. Child defined. The term "child," employed in this chapter, imports any person not exceeding eighteen years of age.

CHAPTER 36.

LOTTERIES.

§ 373, Pen. C.

§ 7217. Lottery defined. A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised or agreed to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share of or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, a raffle or a gift enterprise, or by whatever name the same may be known.

§ 374, Pen. C.

§ 7218. Lottery a public nuisance. Every lottery is unlawful and a common public nuisance.

§ 375, Pen. C.

§ 7219. Drawing lotteries. Punishment. Every person who contrives, prepares, sets up, proposes or draws any lottery, is punishable by a fine equal to double the amount of the whole sum or value for which such lottery was made, and if such amount cannot be ascertained, then by imprisonment in the penitentiary not less than

one and not exceeding two years, or by imprisonment in a county jail not exceeding one year, or by a fine of two thousand five hundred dollars, or by both such fine and imprisonment.

§ 7220. Selling lottery tickets. Every person who sells, § 376, Pen. C. gives or in any manner whatever furnishes or transfers to or for any other person, any ticket, chance, share or interest, or any paper, certificate or instrument, purporting or represented or understood to be or to represent any ticket, chance, share or interest in or depending upon the event of any lottery, is guilty of a misdemeanor.

§ 7221. Buying lottery tickets. Every person who buys, or § 377, Pen. C. in any manner whatever accepts or receives for himself or another any ticket, chance, share or interest, or any paper, certificate or instrument purporting or represented or understood to be or to represent any ticket, chance, share or interest in or depending upon the event of any lottery, forfeits ten dollars, to be recovered by the county superintendent of common schools of the county in which the offense was committed, for the use of common schools in said county.

§ 7222. Advertising lotteries. Every person who, by writing § 378, Pen. C. or printing, by circulars or letters or in any other way, advertises or publishes any account of any lottery, stating when or where the same is to be or has been drawn, or what are the prizes or any of them therein, or the price of a ticket or of any share or interest or where it may be obtained, or in any way aiding or assisting the same or adapted to induce persons to adventure therein, is guilty of a misdemeanor.

§ 7223. Offering property by means of lottery. Every § 379, Pen. C. person who offers for sale, distribution or disposition in any way, any real or personal property or things in action, or any interest therein, to be determined by lot or chance, that shall be dependent upon the drawing of any lottery within or out of this state, and every person who sells, furnishes or procures or causes to be sold, furnished or procured in any manner whatsoever, any chance or share or any interest whatever in any property offered for sale, distribution or disposition in violation of this section, or any ticket or other evidence of any chance, share or interest in such property, is guilty of a misdemeanor.

§ 7224. Keeping lottery office. Every person who opens, sets § 380, Pen. C. up or keeps, by himself or by any other person or persons, any office or other place for registering the numbers of any ticket in any lottery, or for making, receiving or registering any bets or wagers upon the drawing, determination or result of any lottery, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars.

§ 7225. Advertising lottery offices. Every person who, by § 381, Pen. C. writing or printing, by circulars or letters or in any other way, advertises or publishes any account of the opening, setting up or keeping of any office or other place for either of the purposes prohibited by the last section, is guilty of a misdemeanor.

§ 7226. Insuring lottery tickets. Every person who insures § 382, Pen. C. or receives any consideration for insuring for or against the drawing of any ticket, share or interest in any lottery or for or against the drawing of any number or ticket or number of any ticket in any lottery: and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action in the event that any ticket, share or interest in any lottery, or any number or ticket or number of any ticket in any lottery shall

- prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day or in any particular order; and every person who promises, agrees or offers to pay any sum of money or to deliver any property or thing in action, or to do or forbear to do anything for the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, is guilty of a misdemeanor.
- § 383, Pen. C. **§ 7227. Advertising same.** Every person who, by writing or printing, by circulars or letters or in any other way, advertises or publishes any offer, notice or proposal for any violation of the last section, is guilty of a misdemeanor.
- § 384, Pen. C. **§ 7228. Property offered. Forfeited.** All property offered for sale, distribution or disposition, in violation of the provisions of this chapter, is forfeited to the state, as well before as after the determination of the chance on which the same was dependent. And it is the duty of the respective state's attorneys, to demand, sue for and recover, in behalf of this state, all property so forfeited, and to cause the same to be sold when recovered, and to pay the proceeds of the sale of such property, and any moneys that may be collected in any such suit, into the county treasury for the benefit of common schools.
- § 385, Pen. C. **§ 7229. Letting building for lottery.** Every person who lets or permits to be used any building or portion of any building, knowing that it is intended to be used for any of the purposes declared punishable by this chapter, is guilty of a misdemeanor.
- § 386, Pen. C. **§ 7230. Lotteries out of state.** The provisions of this chapter apply in respect to lotteries drawn or to be drawn out of this state whether authorized or not by the laws of the state where they are drawn or to be drawn, in the same manner as to lotteries drawn or to be drawn within this state.
- § 387, Pen. C. **§ 7231. Advertisement.** The provisions of sections 7222 and 7225 are applicable wherever the advertisement was published, or the letter or circular sent or delivered through or in this state, notwithstanding the person causing or procuring the same to be published, sent or delivered, was out of this state at the time of so doing.

CHAPTER 37.

GAMING.

- § 388, Pen. C. **§ 7232. Keeping gambling apparatus.** It is unlawful to maintain or keep any table, cards, dice or any article or apparatus whatever, useful or intended to be used in playing any game of cards or faro or other game of chance, upon which money is usually wagered.
- § 389, Pen. C. **§ 7233. Misdemeanor. Punishment.** Every person who knowingly violates the last section is guilty of misdemeanor.
- § 390, Pen. C. **§ 7234. Apparatus a nuisance.** Every article or apparatus maintained or kept in violation of section 7232, is a common and public nuisance.

§ 7235. **Exacting payment.** Every person who exacts or receives from another, directly or indirectly, any valuable consideration, by reason of the same having been won by playing at cards, faro or any other game at chance, or any bet or wager whatever upon the hands or sides of players, forfeits five times the value of the consideration so exacted or received, to be recovered in a civil action, by the county superintendent of common schools of the county in which the offense was committed, for the benefit of common schools in said county. § 391. Pen. C.

§ 7236. **No witness' privilege.** No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime; but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding. § 392. Pen. C.

§ 7237. **Keeping place for gambling.** Every person who keeps any building or part of any building, or any vessel or float, to be used or occupied for gambling, and every owner, agent or superintendent of any such place, who knowingly lets the same or allows it to be used or occupied for gambling, is guilty of a misdemeanor. § 393. Pen. C.

§ 7238. **Keeping conveniences for gambling.** Every person who, for gambling purposes, keeps or exhibits any gambling table, establishment, device or apparatus, or is guilty of dealing faro, or banking for others to deal faro, or acting as lookout or gamekeeper for the game of faro, or any other banking game where money or property is dependent upon the result, or who sells or vends what are commonly called lottery policies, or any writing, card, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery, or indorses a book or any other document for the purpose of enabling others to sell or vend lottery policies, is deemed a common gambler, and is punishable as for a misdemeanor. § 394. Pen. C.

§ 7239. **Seizure of implements authorized.** Every person who is authorized or enjoined to arrest any person for a violation of the provisions of this chapter, is equally authorized and enjoined to seize any table, cards, dice or other article or apparatus, suitable to be used for gambling purposes, found in the possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. § 395. Pen. C.

§ 7240. **Summary disposition of implements.** The magistrate to whom anything suitable to be used for gambling purposes is delivered, pursuant to the foregoing section, shall, upon the examination of the accused, or if such examination is delayed or prevented, without awaiting such examination, determine the character of the thing so delivered to him and whether it was actually employed by the accused in violation of the provisions of this chapter; and if he finds that it is of a character suitable to be used for gambling purposes and that it has been used by the accused in violation of this chapter, he shall cause it to be destroyed or to be delivered to the state's attorney of the county in which the accused is liable to indictment or trial, as the interests of justice in his judgment require. § 396. Pen. C.

§ 7241. **Destruction of implements.** Upon the conviction of the accused such state's attorney shall cause any such thing suitable to be used for gambling purposes, in respect whereof the accused

stands convicted, and which remains in the possession or under the control of such state's attorney, to be destroyed.

§ 398, Pen. C. **§ 7242. Persuading to visit gambling places.** Every person who persuades another to visit any building or part of a building or any vessel or float used or occupied for the purpose of gambling, in consequence whereof such other person gambles therein, is guilty of a misdemeanor, and, in addition to the punishment prescribed therefor, is liable to such other person in an amount equal to any money or property lost by him at play at such place, to be recovered in a civil action.

§ 399, Pen. C. **§ 7243. Duty of sheriff and officers.** It is the duty of all sheriffs, police officers, constables and prosecuting or state's attorneys, to inform against and prosecute all persons whom they have credible reason to believe are offenders against the provisions of this chapter, and any omission so to do is punishable by a fine not exceeding five hundred dollars.

§ 400, Pen. C. **§ 7244. Duty of master of vessel.** If any commander, owner or lessee of any vessel or float, knowingly permits any gambling for money or property on board such vessel or float, and does not upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars, and in addition thereto is liable to any party losing any money or property by means of any gambling permitted in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

§ 401, Pen. C. **§ 7245. Racing of animals for wager.** All racing or trial of speed between horses or animals for any bet, stake or reward, except such as is allowed by special laws, is a common nuisance, and every person acting or aiding therein, or making or being interested in any such bet, stake or reward, is guilty of a misdemeanor; and in addition to the penalty prescribed therefor, he forfeits all title or interest in any animal used with his privity in such race or trial of speed, and in any sum of money or other property betted or staked upon the result thereof.

CHAPTER 38.

PAWNBROKERS.

§ 402, Pen. C. **§ 7246. Doing business without license.** Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above that allowed by law, except by authority of a license from a municipal corporation empowered to grant licenses to pawnbrokers, is guilty of a misdemeanor.

§ 403, Pen. C. **§ 7247. Refusing to exhibit stolen goods.** Every pawnbroker or person carrying on the business of a pawnbroker, and every junk dealer, who having received any goods which have been embezzled or stolen, refuses or omits to exhibit them, upon demand, during the usual business hours, to the owner of said goods or his agent authorized to demand an inspection thereof, is guilty of a misdemeanor.

§ 7248. **Selling before default.** Every pawnbroker who sells any article received by him in pledge, before the time to redeem the same has expired, and every pawnbroker who willfully refuses to disclose the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, is guilty of a misdemeanor. § 401, Pen. C.

§ 7249. **Peddling without license.** Any person who shall pursue the business of trading as a peddler or traveling merchant without license, or who refuses to produce his license for examination upon the request of any resident or officer of the county in which he is carrying on such business, is guilty of a misdemeanor, and upon conviction thereof is punishable in the discretion of the court, by a fine of not exceeding fifty dollars or by imprisonment in the jail of the county in which the offense is committed not exceeding thirty days. § 5, c. 85, 1895.

CHAPTER 39.

OTHER INJURIES TO PERSONS.

§ 7250. **Physician being intoxicated.** Every physician who, being in a state of intoxication, administers any poison, drug or medicine or does any other act as such physician, to another person, by which the life of such other is endangered, is guilty of a misdemeanor. § 405, Pen. C.

§ 7251. **Willfully poisoning food.** Every person who willfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by any human being to his injury, and every person who willfully poisons any spring, well or reservoir of water, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. § 406, Pen. C.

§ 7252. **Overloading passenger vessel.** Every person navigating any vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading on board such vessel, that by means thereof such vessel sinks or is upset or injured, and thereby the life of any human being is endangered, is guilty of a misdemeanor. § 407, Pen. C.

§ 7253. **Mismanagement of steamboats.** Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates or allows to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a misdemeanor. § 408, Pen. C.

§ 7254. **Engineer. Steam boilers.** Every engineer or other person having charge of any steam boiler, steam engine or other

apparatus for generating or employing steam, employed in any manufactory, railway or other mechanical works, who willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler or engine or apparatus or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

§ 410, Pen. C.

§ 7255. Fictitious partnership name. Every person transacting business in the name of a person as a partner who is not interested in his firm, or transacting business under a firm name in which the designation "and company," or "& Co." is used without representing an actual partner, except in the cases in which the continued use of a copartnership name is authorized by law, is guilty of a misdemeanor.

§ 411, Pen. C.

§ 7256. Counterfeiting trade-mark. Every person who willfully forges, counterfeits or procures to be forged or counterfeited any trade-mark usually affixed by any person to any goods of such person, with intent to pass off any goods to which such forged or counterfeit trade-mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

§ 412, Pen. C.

§ 7257. Keeping dies of trade-mark. Every person who, with intent to defraud, has in his possession any die, plate or brand, or any imitation of the trade-mark of any person, for the purpose of making any counterfeit or imitation of any description whatever of such trade-mark, or of selling the same when made, or affixing the same to any goods, and selling or offering the same for sale or disposal as the original goods of any other person, and every person who so uses or sells the same, or who fraudulently uses the genuine trade-mark of another with intent to sell or offer for sale or disposal, any goods not the goods of the person to whom such trade-mark properly belongs, as genuine and original, is guilty of a misdemeanor.

§§ 11, 12, c. 40,
1891,
am'd.

§ 7258. Appropriating brands to deceive. Every person who, either:

1. Uses or causes to be used any brand, mark, name, print, designation or description, the same as or similar to any recorded to any other person, or on the place recorded to another; or,

2. Uses or causes to be used any second hand sack, box, barrel, can, package or other article on which has been placed any brand, mark, name, print, designation or description, the property of another, for purposes of deception or profit, is guilty of a misdemeanor, and upon conviction thereof is punishable by fine of not less than one hundred and not exceeding one thousand dollars.

§ 413, Pen. C.

§ 7259. Selling goods bearing counterfeit. Every person who sells or keeps for sale any goods upon which any counterfeit trade-mark has been affixed, and intended to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

§ 414, Pen. C.

§ 7260. Colorable imitations. Every person who, with intent to defraud, affixes or causes to be affixed to any goods or to any bottle, case, box or other package containing any goods, any description of label, stamp, brand, imprint, printed wrapper, label or mark, which designates such goods by any word or token which is wholly or in part the same to the eye or to the ear, as the word or any of the words or tokens used by any other person as his trade-mark, and every person who knowingly sells or keeps or offers for sale, any such bottle, case, box or other package, with any such label, stamp,

brand, imprint, printed wrapper, ticket or mark affixed to or upon it, in case the person affixing or causing to be affixed such mark, or so selling or exposing or offering for sale such bottle, case, box or other package, was not the first to employ or use such words as his trade-mark, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable to the party aggrieved in the penal sum of one hundred dollars for each and every offense, to be recovered by him in a civil action.

§ 7261. **Trade-mark defined.** The words "trade-mark," as § 415, Pen. C. used in the sections preceding, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word or expression generally denoting any goods to be of some particular class or description.

§ 7262. **Goods defined.** The word "goods," as used in the § 416, Pen. C. sections preceding, includes every kind of goods, wares, merchandise, compound or preparation, which may be lawfully kept or offered for sale.

§ 7263. **Affixing defined. When crime complete.** The § 417, Pen. C. offense of affixing a false trade-mark to goods is equally complete within the meaning of sections 7256, 7259 and 7260, whether such mark is affixed to the goods themselves, or to any box, bale, barrel, bottle, case, cask, wrapper or other package or vessel, or any cover or stopper thereof, in which such goods are put up.

§ 7264. **Refilling or selling bottles.** Whenever any per- § 418, Pen. C. son engaged in manufacturing, bottling or selling in bottles, soda, mineral waters, porter, ale, cider or small beer, has filed and published, in the manner authorized by law, a description of a name, mark or label, usually stamped by him in the bottles containing such beverage, every other person who, without the written consent of such manufacturer or dealer, refills with any beverage, whether genuine or otherwise, with the intent to sell the same, any bottles stamped with such name, mark or label, and every person who sells, disposes of, purchases or traffics in such bottles, is liable to a penalty of fifty cents for each and every bottle so filled, sold, bought, disposed of or trafficked in, for the first offense, and five dollars for each and every bottle so filled, bought, disposed of or trafficked in, for every subsequent offense.

§ 7265. **Keeping bottles with intent to refill.** Every per- § 419, Pen. C. son who keeps any bottles such as are designated in the last section, without the written consent of the manufacturer so to do, unless it appears that they were not kept with intent to refill or use or sell them in violation of the last section, is liable to the penalty therein prescribed.

§ 7266. **Complaint. Search. Penalty.** Whenever any man- § 420, Pen. C. ufacturer or dealer designated by section 7264, or his agent, shall make oath or affirmation before any magistrate that he has reason to believe and does believe, that any of his bottles stamped and registered as mentioned in said section are being unlawfully used by any person or persons selling or manufacturing mineral water or other beverages, or that any junk dealer or vender of bottles, has any of such bottles secreted in any place, such magistrate shall thereupon issue a search warrant to discover and obtain the same under the pro-

visions of the law upon search warrants, which are hereby declared to relate fully to the purposes of this chapter; and the magistrate may summarily bring or cause to be brought before him the person in whose possession the bottles are found, to examine into the circumstances of his possession, and if such magistrate on summary examination finds that such person has been guilty of a violation of section 7264, such magistrate shall proceed to impose the fine therein prescribed, and if the same is not paid, to commit such person to prison for a term not exceeding fifteen days.

§ 1, c. 138, 1887.

§ 7267. Wrongfully obtaining registration of animal.

Every person who by any false pretense shall obtain from any club, association, society or company for improving the breed of cattle, horses, sheep, swine or other domestic animals, the registration of any animal in the herd register of any such club, association, society or company, or a transfer of any such registration, and every person who shall knowingly give a false pedigree of any animal, shall be deemed guilty of a misdemeanor.

§ 421, Pen. C.

§ 7268. Defacing marks upon wrecked property.

Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership, is guilty of a misdemeanor.

§ 422, Pen. C.

§ 7269. Same. Logs. Lumber.

Every person who cuts out or defaces any mark made upon any log or lumber, whether such mark is recorded or not, or puts a false mark upon any log or lumber, floating in any of the waters of this state or lying upon land, is guilty of a misdemeanor.

§ 423, Pen. C.

§ 7270. Unlawful detention of wrecked property.

Every officer who, without authority of law, detains any wrecked property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of his duties, or who violates any provision of the statutes relating to salvage, is guilty of a misdemeanor.

§ 424, Pen. C.

§ 7271. Fraud in limited partnership.

Every member of a limited partnership who is guilty of any fraud in the affairs of the partnership, is guilty of a misdemeanor.

§§ 10, 11, c. 91,
1890,
am'd.

§ 7272. Marriage. County judge. Licenses. Certificates.

Record. Every person who, being judge of the county court or county judge, either:

1. Signs or issues a marriage license, except as prescribed by law; or,

2. Neglects to record as prescribed by law any marriage license or the certificate of the person performing the marriage ceremony, for thirty days after the return of the same, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars.

§ 10, c. 91, 1890,
am'd.

§ 7273. Marrying without license. Certificates. Return.

Every person who being authorized by law to solemnize marriages within this state, either:

1. Joins any person in marriage before the license prescribed by law therefor is produced to him; or,

2. Fails to execute as prescribed by law the certificate of any marriage solemnized by him; or,

3. Neglects for thirty days after joining in marriage the persons named in such license, to return such license and certificate to the judge of the county court issuing the license, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars.

§ 7274. Performing marriage ceremony without authority. Every person who attempts to join others in marriage or to perform the marriage ceremony for another within this state without being authorized by law so to do, is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not less than ninety days and not exceeding one year, or by a fine of not less than one hundred and not exceeding five hundred dollars, or by both.

§ 12, c. 91, 1890.
am'd.

§ 7275. When marriage without authority valid. No marriage shall be void by reason of being performed without authority, if otherwise lawful and the parties thereto or one of them believed it lawful.

§ 12, c. 91, 1890.
am'd.

§ 7276. Unlawful confinement of insane person. Every overseer of the poor, constable, keeper of a jail, or other person who confines any idiot, lunatic or insane person, in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor.

§ 426, Pen. C.

§ 7277. Reconfining person discharged. Every person who, either solely or as a member of a court in the execution of a judgment, order or process, knowingly recommit, imprisons or restrains of his liberty for the same cause, any person who has been discharged from imprisonment upon a writ of deliverance, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits to the party aggrieved one thousand dollars, to be recovered in a civil action.

§ 428, Pen. C.

§ 7278. Concealing persons entitled to writ of deliverance. Every person having in his custody or power or under his restraint, a party who, by the provisions of the law relating to habeas corpus, would be entitled to a writ of habeas corpus, or for whose relief such writ has been issued, who, with intent to elude the service of such writ or to avoid the effect thereof, transfers the party to the custody, or places him under the power or control of another, or conceals or changes the place of his confinement, or who, without lawful excuse, refuses to produce him, is guilty of a misdemeanor.

§ 429, Pen. C.

§ 7279. Assisting such concealment. Every person who knowingly assists in the violation of the last section is guilty of a misdemeanor.

§ 430, Pen. C.

§ 7280. Unlawfully acting as a pharmacist. Every person who is not a registered pharmacist, or has not a registered pharmacist in his employ and who, either:

§§ 1, 12, c. 108,
1890,
am'd.
§ 6, c. 80, 1893,
am'd.

1. Takes, uses or exhibits, the title or certificate of a registered pharmacist; or,

2. Retail, compounds or dispenses medicine; or,

3. Permits the compounding or dispensing of prescriptions, or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist; or,

4. Violates or fails or neglects to comply with and observe any provision of law relating to or regulating the practice of pharmacy; and every person who,

5. Willfully makes any false representation to procure registration as a pharmacist for himself or for any other person, is guilty of a misdemeanor, and upon conviction thereof,

Is punishable by a fine not exceeding fifty dollars.

§ 6, c. 80, 1893,
am'd.

§ 7281. Provisions of last section limited. The provisions of the last section shall not be construed to interfere in any manner with the business of a physician in regular practice; nor to prevent such physician from supplying his patients with whatever he may deem necessary; nor to prevent him from receiving a certificate as a registered pharmacist as provided by law; nor to interfere with the making or compounding of proprietary medicines or medicines placed in sealed packages with the name of the contents and of the person by whom prepared or compounded; nor to prevent shopkeepers from dealing in or selling the commonly used medicines and poisons, if such medicines or poisons are put up by a regular pharmacist; nor from dealing in and selling patent or proprietary medicines; nor to interfere with the exclusive wholesale business of any dealer.

§ 14, c. 108, 1890,
am'd.

§ 7282. Selling certain enumerated poisons. Every person who, at retail, sells, furnishes or delivers to another, either:

1. Arsenic or its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia and all other poisons, vegetable alkaloids and their salts, essential oil of bitter almonds, opium or its preparations, except paregoric and other preparations of opium with less than two grains to the ounce; or,

2. Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid, without affixing to the bottle, box, vessel or package containing the same, the name of the contents, the word "poison," and his name and place of business, is guilty of a misdemeanor.

§ 14, c. 108, 1890,
am'd.

§ 7283. Physicians' prescriptions excepted. The provisions of the last section shall not be construed to include or apply to the dispensing of physicians' prescriptions specifying or containing poison.

§ 14, c. 108, 1890,
am'd.

§ 7284. Record of poisons sold. Every person who, at retail, sells, furnishes or delivers to another any of the articles or preparations mentioned in section 7282 or any drug, chemical or preparation which according to the standard works on medicines or materia medica is liable, in quantities of sixty grains or less, to destroy adult human life, and who, either:

1. Fails or neglects, before delivering the same, to enter or cause to be entered in a book kept for that purpose, the date of sale, the name and address of the person to whom delivered or sold, the name, quantity and quality of the article or preparation delivered or sold, and the name of the dispenser; or,

2. Fails, neglects or refuses during business hours to exhibit such book and every part thereof for inspection and to permit the same and every part thereof, upon demand, to be inspected by any physician, coroner, sheriff, constable or magistrate of the county,

Is guilty of a misdemeanor.

§ 14, c. 108, 1890,
am'd.

§ 7285. How violations punished. Every person convicted of any of the offenses mentioned in sections 7282 and 7284 is pun-

ishable by a fine of not less than five and not exceeding one hundred dollars.

§ 7286. Adulterating medicines. Every person who knowingly, willfully or fraudulently, either:

1. Falsifies or adulterates or causes or permits to be falsified or adulterated, any drug, medicinal preparation authorized or recognized by any standard work on pharmacy, or used or intended to be used medicinally; or, § 13, c. 108, 1890, am'd.

2. Mixes or causes or permits to be mixed with any such drug or medicinal preparation any foreign or inert substance for the purpose or with the intent of destroying or weakening its medicinal power or effect or of lessening its cost; or,

3. Sells, furnishes or delivers or causes or permits any such falsified or adulterated drug or medicinal preparation to be sold, furnished or delivered for medicinal purposes,

Is guilty of a misdemeanor.

CHAPTER 40.

CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

§ 7287. Public nuisance defined. A public nuisance is a crime against the order and economy of the state, and consists in unlawfully doing any act or omitting to perform any duty required by the public good, which act or omission, either: § 431, Pen. C.

1. Annoys or injures the comfort, repose, health or safety of any considerable number of persons; or,

2. Offends public decency; or,

3. Unlawfully interferes with, obstructs or tends to obstruct, any lake or any navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,

4. In any way renders life or the use of property uncomfortable.

§ 7288. Unequal damage. An act which affects a considerable number of persons in either of the ways specified in the last section, is not less a nuisance because the extent of the damage is unequal. § 432, Pen. C.

§ 7289. Maintaining nuisance. Misdemeanor. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor. § 433, Pen. C.

§ 7290. Keeping explosives. Every person who makes or keeps gunpowder, saltpeter, gun cotton, nitroglycerine or dynamite or any compound of the same, or any fulminate or substance which is intended to be used by exploding or igniting the same, in order to produce a force to propel missiles or to rend apart substances, within any city, town or village, and any person who carries any of such explosives through the streets thereof, in any quantity or manner prohibited by law or by any ordinance, by-law or regulation of said city, town or village, is guilty of a misdemeanor. § 434, Pen. C. am'd.

§ 435, Pen. C. **§ 7291. Fouling waters with gas tar.** Every person who throws or deposits any gas tar or refuse of any gas house or factory, into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor.

§ 436, Pen. C. **§ 7292. Violation of quarantine laws.** Every master of a vessel subject to quarantine or visitation of the health officer, by the provisions of any law of this state, now in force or that hereafter may be enacted, arrives in any port or at the boat landing of any city or town in this state, who refuses or omits, either:

1. To proceed with and anchor or land his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo and passengers to the examination of the health officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought respectively to be subject; or,

3. To remain with his vessel at quarantine, during the period assigned for her quarantine and while at quarantine, to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 437, Pen. C. **§ 7293. Offenses by master of vessel.** Every master of a vessel hailed by a pilot, or such officer as may be specified by law, who either:

1. Give false information to such pilot or other officer, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or,

2. Lands any person from his vessel, or permits any person, except a pilot or such officer specified by law, to come on board of his vessel, or unloads or tranships any portion of his cargo before his vessel has been visited and examined by the proper health officers; or,

3. Approaches with his vessel nearer any city or town within this state than the place of quarantine to which he may be directed, is punishable by imprisonment in the county jail of the county in which the offense was committed, not exceeding one year, or by a fine not exceeding two thousand dollars, or both such fine and imprisonment.

§ 438, Pen. C. **§ 7294. Landing before visit of health officers.** Every person who, being on board any vessel at the time of her arrival at any port within this state, under the provisions of section 7292, lands from such vessel, or unloads or tranships, or assists in unloading or transshipping any portion of her cargo, before such vessel has been visited and examined by the health officers, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 439, Pen. C. **§ 7295. Other visitations.** Every person who goes on board of or has any communication, intercourse or dealing with any vessel at quarantine, or with any of the crew or passengers of such vessel, without the permission of the health officer, and every person who, without such authority enters the quarantine grounds or anchorage, is punishable by imprisonment in a county jail not exceeding one

year, or by a fine not exceeding two thousand dollars, or both: and in addition thereto he may be detained at quarantine so long as the health officers shall direct, not exceeding twenty days. And in case such person shall be taken sick of any infectious, contagious or pestilential disease, during such twenty days, he may be detained for such further time and at such place as the health officer shall direct.

§ 7296. Violating quarantine orders. Every person who, § 40, Pen. C.
having been lawfully ordered by any health officer to be detained in quarantine, and not having been discharged, leaves the quarantine grounds or anchorage, or willfully violates any quarantine law or regulation, is guilty of a misdemeanor.

§ 7297. Obstructing health officer. Every person who will- § 41, Pen. C.
fully opposes or obstructs any health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 7298. Violation of health laws. Every person who will- § 42, Pen. C.
fully violates any provision of the health laws, the punishment for violating which is not otherwise prescribed by those laws or by this code, and every person who willfully violates or refuses or omits to comply with any lawful order, direction, prohibition or regulation prescribed by any board of health or health officer, or any regulation lawfully made or established by any public officer under authority of the health laws, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars, or both.

§ 7299. Unlicensed piloting. Every person not holding a § 43, Pen. C.
license as pilot under the laws of this state, or under the laws of either of the states of Missouri, Kansas, Iowa or Nebraska, who pilots or offers to pilot any steamboat to or from any port within this state, is guilty of a misdemeanor.

§ 7300. Last section limited. The last section applies only § 44, Pen. C.
to vessels propelled by steam while engaged in conveying freight and passengers or either, on the Missouri river.

§ 7301. Assuming to act as port warden. Every person § 45, Pen. C.
who, not being a port warden, assumes or undertakes to act as such, under or by the provisions of any law of this state now in force or that may hereafter be enacted, and every person who issues any certificate of a survey on vessels, materials or goods damaged, with the intent to avoid the provisions of the law, is guilty of a misdemeanor.

§ 7302. Apothecary negligently endangering life. Every § 46, Pen. C.
apothecary or druggist, and every person employed as clerk or salesman by an apothecary or druggist, or otherwise carrying on business as a dealer in drugs or medicines, who, in putting up any drugs or medicines, willfully, negligently or ignorantly omits to label the same, or puts any untrue label, stamp or other designation of contents upon any box, bottle or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor.

§ 7303. Record of poison sold. Label. No druggist, apothecary or other person dealing or trafficking in drugs or medicines, and § 47, Pen. C.
no person employed as clerk or salesman by any apothecary or drug- am'd.

gist, shall sell or give away any poison or poisonous substances, except to practicing physicians, in their ordinary practice of medicine, without recording in a book, to be kept for that purpose, the name of the person or persons receiving such poison, and his, her or their residence, excepting upon the written order or prescription of some practicing physician whose name must be attached to such order or prescription. No person shall sell, give away or dispose of any poisonous substance without attaching to the phial, box or parcel containing such poisonous substance a label with the word "poison," printed or written upon it, in plain and legible characters.

§ 448, Pen. C. **§ 7304. Violation, misdemeanor.** Any person violating any of the provisions of section 7303 shall be deemed guilty of a misdemeanor.

§ 449, Pen. C. **§ 7305. Record subject to inspection.** Every person whose duty it is by section 7303 to keep any book for recording the sale or gift of poisons, who willfully refuses to permit any person to inspect said book upon reasonable demand made during business hours, is punishable by fine not exceeding fifty dollars.

§ 450, Pen. C. **§ 7306. Laying out poison. Exception.** Every person who shall lay out strychnine or other poison, within the limits of any town, or within one mile of any dwelling house or any barn, stable or outbuilding, used at the time for the keeping or shelter of horses, cattle, sheep or swine, or within one half mile of any traveled thoroughfare, on the ceded lands of this state, is guilty of a misdemeanor; provided, nothing in this section shall be construed to prohibit the putting out at any time of poisoned grain, for the purpose of killing gophers.

§ 451, Pen. C. **§ 7307. Omitting to mark baled hay.** Every person who, in putting up or pressing any bundle of hay for market, omits to put the number of pounds in each bundle or bale so put up, for which he sells or offers to sell it, is guilty of a misdemeanor.

§ 452, Pen. C. **§ 7308. Fraudulently increasing weight.** Every person who, in putting up in any bag, bale, box, barrel or other package, any hops, cotton, hay or other goods usually sold in bags, bales, barrels or packages, by weight, puts in or conceals therein anything whatever for the purpose of increasing the weight of such bag, bale, box, barrel or package, is punishable by a fine of twenty-five dollars for each offense.

§ 453, Pen. C. **§ 7309. Adulterating food or medicines.** Every person who adulterates or dilutes any article of food, drink, drug, medicine, strong, spirituous or malt liquor or wine, or any article useful in compounding either of them, whether one useful for mankind or for animals, with a fraudulent intent to offer the same, or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells or keeps or offers for sale the same as unadulterated or undiluted, knowing it to have been adulterated or diluted, is guilty of a misdemeanor.

§ 454, Pen. C. **§ 7310. Knowingly selling tainted food.** Every person who knowingly sells, or keeps or offers for sale or otherwise disposes of any article of food, drink, drug or medicine, knowing that the same has become tainted, decayed, spoiled or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank by any person or animal, is guilty of a misdemeanor.

§ 455, Pen. C. **§ 7311. Manufacturing slung shot.** Every person who manufactures or causes to be manufactured, or sells or offers or keeps for

sale or gives or disposes of any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a misdemeanor.

§ 7312. Carrying or using slung shot. Every person who carries upon his person, whether concealed or not, or uses or attempts to use against another, any instrument or weapon of the kind usually known as slung shot, or of any similar kind, is guilty of a felony. § 456, Pen. C.

§ 7313. Carrying concealed weapons. Every person who carries concealed about his person any description of firearms, being loaded or partly loaded, or any sharp or dangerous weapon, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor. § 457, Pen. C.

§ 7314. Willfully firing prairies and marshes. Every person who shall willfully set on fire, or cause to be set on fire, any woods, marshes or prairies, with intention to injure the property of another, shall be deemed guilty of a misdemeanor, and shall be liable for all damages done by such fire. § 458, Pen. C.

§ 7315. Negligently firing same. Every person who negligently or carelessly sets on fire or causes to be set on fire, any woods, marshes or prairies, or who, having set the same on fire or caused it to be done, negligently or carelessly or without full precaution or efforts to prevent, permits it to spread beyond his control, shall, upon conviction, be fined not exceeding one hundred dollars and not less than ten dollars, and shall be liable to injured parties for all damages occasioned thereby. One-half of such fine shall, when collected, go to the informer. § 459, Pen. C.

§ 7316. Refusing to aid at fires. Every person who, at any burning of a building, is guilty of any disobedience to lawful orders of any public officer or fireman, or of any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or of any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor. § 460, Pen. C.

§ 7317. Unlicensed ferry. Every person who maintains any ferry for profit or hire upon any waters within this state, without having first obtained a license as provided by law, is guilty of a misdemeanor. And any license or lease granted by the board of county commissioners of the proper county shall be exclusive to the lessee or licensee for a distance of two miles from the place where such ferry is located, up and down such stream either way; and any person who shall ferry, transport or carry or attempt to ferry, transport or carry any passengers, goods, chattels or merchandise, or who shall have, keep or maintain any scow, skiff or boat for the purpose of ferrying, transporting or carrying any passengers, goods, chattels or merchandise upon any water of this state within a distance of two miles of any licensed ferry, shall be guilty of a misdemeanor, and may be punished by a fine not exceeding one hundred dollars, or thirty days imprisonment in the county jail, or by both fine and imprisonment: when such ferry is upon waters dividing two counties, the offenders may be prosecuted in either county. § 461, Pen. C.
§ 1, c. 21, 1879.

§ 7318. Violating ferry bond. Every person who, having entered into a bond or obligation, as provided by his ferry charter or any general law on the subject of ferries, to keep and attend a ferry, § 462, Pen. C.

violates the condition of such bond or obligation, is guilty of a misdemeanor.

§ 463, Pen. C. **§ 7319. Failure to ring locomotive bell.** Every person in charge, as engineer, of a locomotive engine, who omits to cause a bell to ring or a steam whistle to sound at the distance of at least eighty rods from the place where the track crosses, on the same level, any traveled public way, is punishable by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding sixty days.

§ 464, Pen. C. **§ 7320. Intoxicated engineer or conductor.** Every person who, while in charge as engineer, of a locomotive engine, or while acting as conductor or driver upon a railroad train or car, whether propelled by steam or drawn by horses, is intoxicated, is guilty of a misdemeanor.

§ 465, Pen. C. **§ 7321. Railroad employee's neglect of duty.** Every engineer, conductor, brakeman, switchtender or other officer, agent or servant, of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent or servant, by which human life or safety is endangered, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor.

§ 466, Pen. C. **§ 7322. Guards at ice cutting.** All persons and incorporated companies cutting ice in or upon any waters within the boundaries of this state, for the purpose of removing such ice for sale, shall surround the cuttings and openings made, with fences or bushes or other guards sufficient to warn all persons of such cuttings and openings.

§ 467, Pen. C. **§ 7323. How long maintained.** Such fences or guards must be erected at or before the time of commencing such cuttings or openings, and must be maintained until ice has again formed in such openings to the thickness of at least six inches.

§ 468, Pen. C. **§ 7324. Violations, misdemeanor.** Every person who violates the provisions of the last two sections is guilty of a misdemeanor.

§ 469, Pen. C. **§ 7325. Obstructing navigation.** Every person who in any manner obstructs the free navigation of any navigable water course within this state, is guilty of a misdemeanor.

§ 470, Pen. C. **§ 7326. Exposing person with contagious disease.** Every person who willfully exposes himself or another person, being affected with any contagious disease, in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

§ 471, Pen. C. **§ 7327. Frauds to affect market price.** Every person who willfully makes or publishes any false statement, spreads any false rumor or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

§ 472, Pen. C. **§ 7328. False statements to increase newspaper sales.** Every editor or proprietor of any newspaper who willfully publishes in such newspaper as true, any statement which he has not good reason to believe to be true, with intent to increase thereby the sales of copies of such paper, is guilty of a misdemeanor.

§ 473, Pen. C. **§ 7329. Eavesdropping.** Every person guilty of secretly loitering about any building, with intent to overhear discourse therein and to repeat or publish the same to vex, annoy or injure others, is guilty of a misdemeanor.

§ 474, Pen. C. **§ 7330. Racing upon highways.** Every person driving any conveyance drawn by horses upon any public road or way, who

causes or suffers his horses to run, with intent to pass another conveyance or to prevent such other from passing his own, is guilty of a misdemeanor.

CHAPTER 41.

IMPORTATION, SALE AND EXPOSURE OF INFECTED STOCK.

§ 7331. **Importing, using or selling infected stock.** Every § 1, c. 65, 1886.
person who, either: am'd.

1. Imports or brings into this state any horse, mule or ass; or,
2. Suffers the same to run at large upon any common, highway or uninclosed land; or,
3. Uses, ties or keeps the same in any public place, stable or barn; or,
4. Sells, trades or offers to sell or trade the same, knowing or having good reason to believe such horse, mule or ass to be infected with the disease known as glanders or button-farcy, is guilty of a misdemeanor, and upon conviction thereof, is punishable by imprisonment in the county jail, not exceeding one year, or by a fine of not less than fifty and not exceeding five hundred dollars, or by both.

§ 7332. **Not restraining infected sheep.** Every person who § 1, c. 33, 1887.
owns or has in charge any sheep infected with scab or other infectious am'd.
or contagious disease and who, either:

1. Does not keep such sheep securely within some inclosure; or,
2. Does not 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 being herded; or,
3. Drives or permits any such sheep to be driven upon any public highway, or within the distance of one mile from any such highway, or within the distance of six miles from any farm, corral, shed or other established headquarters where sheep are kept or being herded, Is guilty of a misdemeanor.

§ 7333. **Last section limited. Public domain.** The provis- § 1, c. 33, 1887.
ions of the last section shall not be construed to prevent a person am'd.
who had established headquarters prior to March 11, 1887, from allowing such sheep to range upon the public domain within a radius of six miles from such headquarters; provided, such radius does not reach nearer than three miles from the headquarters of any other such person.

§ 7334. **Refusing to allow examination.** Every person who § 3, c. 33, 1887.
is in charge of any band of sheep that is being driven or kept within am'd.
six miles of the headquarters where sheep belonging to any other person are kept or corralled and who fails, neglects or refuses, upon demand by such other person or any one in his employ, to stop such band and allow them to be examined, or to aid and assist in catching and examining them, is guilty of a misdemeanor.

§ 7335. **Willfully spreading infection, felony.** Every per- § 4, c. 33, 1887.
son who willfully, either: am'd.

1. Carries or drives or causes to be carried or driven any sheep

infected with scab or any infectious or contagious disease among sheep belonging to another; or,

2. Carries or places or causes to be carried or placed the parasite which causes such scab or disease where sheep not his own are being herded or corralled, with intent that such sheep shall become infected thereby, is guilty of a felony and upon conviction thereof is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine of not less than one thousand dollars, or by both.

§ 6, c. 33, 1887.
am'd.

§ 7336. Civil action for damages. Every person violating any of the provisions of this chapter shall be liable in a civil action to any person injured by such violation for all damages directly or indirectly suffered thereby.

CHAPTER 42.

SALE OF CIGARETTES AND TOBACCO TO MINORS.

§ 1, c. 31, 1895.

§ 7337. Adulterating cigarettes. Punishment. Any person within this state who manufactures, sells, gives to any one or uses any cigarette containing any substance foreign to tobacco and deleterious to health, shall be punished by a fine of not more than fifty dollars or imprisonment in a county jail for not more than thirty days.

§ 2, c. 31, 1895.

§ 7338. Selling to minors, prohibited. Any person within this state who sells or gives to or in any way furnishes to any person under the age of seventeen years, any cigarettes, cigars or tobacco of any kind, shall be punished by a fine of not more than fifty dollars or imprisonment in a county jail for not more than thirty days.

CHAPTER 43.

CRIMES AGAINST THE PUBLIC PEACE.

§ 475, Pen. C.

§ 7339. Disturbing lawful meeting. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as are mentioned in sections 6852, 6874 and 7203 of this code, is guilty of a misdemeanor.

§ 476, Pen. C.

§ 7340. Riot defined. Any use of force or violence, or any threat to use force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot.

§ 477, Pen. C.

§ 7341. Punishment of riot. Every person guilty of participating in any riot is punishable as follows:

1. If any murder, maiming, robbery, rape or arson was committed in the course of such riot, such person is punishable in the same manner as a principal in such crime.

2. If the purpose of the riotous assembly was to resist the execution of any statute of this state or of the United States, or to obstruct any public officer of this state or of the United States, in the performance of any legal duty or in serving or executing any legal process, such person is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

3. If such person carried, at the time of such riot, any species of firearms or other deadly or dangerous weapon, or was disguised, he is punishable by imprisonment in the penitentiary not exceeding ten years and not less than two.

4. If such person directed, advised, encouraged or solicited other persons, who participated in the riot, to acts of force or violence, he is punishable by imprisonment in the penitentiary for not less than three years.

5. In all other cases such person is punishable as for a misdemeanor.

§ 7342. Rout defined. Whenever three or more persons, acting together, make any attempt to do any act toward the commission of an act which would be riot if actually committed, such assembly is a rout. § 478, Pen. C.

§ 7343. Unlawful assembly defined. Misdemeanor. § 479, Pen. C.
Whenever three or more persons assemble with intent or with means and preparations to do an unlawful act which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such a manner as is adapted to disturb the public peace or excite public alarm, such assembly is an unlawful assembly.

§ 7344. Rout or unlawful assembly, misdemeanor. §§ 480, 481, Pen. C.
Every person who participates in any rout or unlawful assembly, is guilty of a misdemeanor, and every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 7345. Remaining after unlawful purpose disclosed. § 482, Pen. C.
When three or more persons assemble for a lawful purpose, and afterwards proceed to commit an act that would amount to riot if it had been the original purpose of the meeting, every person who does not retire when the change of purpose is made known, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 7346. Refusing to arrest rioter. § 483, Pen. C.
Every person present at any riot, and lawfully commanded to aid the magistrate or officers in arresting any rioter, who neglects or refuses to obey such command, is deemed one of the rioters, and punishable accordingly.

§ 7347. Resisting execution of process. § 484, Pen. C.
Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both.

§ 7348. Engaging in prize fight. § 485, Pen. C.
Every person who engages in, instigates, encourages or promotes, any ring or prize fight or any

other premeditated fight or contention, whether as principal, aid, second, umpire, surgeon or otherwise, although no death or personal injury ensues, is guilty of a misdemeanor.

§ 486, Pen. C.

§ 7349. Challenge to prize fight. Every person who challenges another to engage in any such fight as is specified in the last section; every person who accepts any such challenge; every person who knowingly forwards, carries or delivers any such challenge; and every person who bets, stakes or wagers any money or property upon the result of any such fight, or who undertakes to hold any money or property so betted, staked or wagered, to be delivered to or for the benefit of the winner thereof, is guilty of a misdemeanor.

§ 487, Pen. C.

§ 7350. Acts constituting challenge. Any words spoken or written or any signs uttered or made to any person, expressing or implying or intended to express or imply, a desire, request, invitation or demand to engage in any fight, such as is mentioned in section 7348, are deemed a challenge within the meaning of the last section.

§ 488, Pen. C.

§ 7351. Leaving state to engage in prize fight. Every person who leaves this state with the intent to elude any of the provisions of the last three sections, and to commit any act out of this state such as is prohibited by them, and who does any act which would be punishable under such provisions, if committed within this state, is punishable in the same manner as he would have been in case such act had been committed within this state.

§ 489, Pen. C.

§ 7352. Place of trial. Such person may be prosecuted and tried in any county within this state.

§ 490, Pen. C.

§ 7353. Duty of peace officers regarding prize fights. It is the duty of all sheriffs, constables, policemen and watchmen, who have reasonable grounds to believe that any offense specified in section 7348 is about to be committed within their jurisdiction, to make complaint under the provisions of this chapter to some magistrate within their jurisdiction.

§ 491, Pen. C.

§ 7354. Neglect a misdemeanor. Every sheriff, constable, policeman or watchman, who willfully neglects the duty prescribed by the last section, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he forfeits his office.

§ 492, Pen. C.

§ 7355. Forcible entry or detainer of lands. Every person guilty of using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and manner allowed by law, is guilty of a misdemeanor.

§ 493, Pen. C.

§ 7356. Returning to lands after removal. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer, and who afterward, without authority of law, returns to settle or reside upon such lands, is guilty of a misdemeanor.

§ 494, Pen. C.

§ 7357. Unlawful intrusions upon lots. Every person who intrudes or squats upon any lot or piece of land within the bounds of any incorporated city or village, without license or authority from the owner thereof, or who erects or occupies thereon any hut, hovel, shanty or other structure whatever, without such license or authority; and every person who places, erects or occupies within the bounds of any street or avenue of such city or village, any hut, hovel, shanty or other structure whatever, is guilty of a misdemeanor.

§ 7358. Unlawful discharge of firearms. Every person § 495, Pen. C.
who willfully discharges any species of firearm, air gun or other
weapon, or throws any other missile in any public place or in any
place where there is any person to be endangered thereby, although
no injury to any person shall ensue, is guilty of a misdemeanor.

§ 7359. No privilege from testifying. No person shall be § 496, Pen. C.
excused from giving any evidence upon any investigation or prosecu-
tion for any of the offenses specified in this chapter, upon the ground
that such testimony or evidence might tend to convict him of a crime.
But such answer or evidence shall not be received against him upon
any criminal proceeding or prosecution.

CHAPTER 44.

CRIMES AGAINST THE REVENUE AND PROPERTY OF THE STATE.

§ 7360. Embezzlement and false accounts by officers. § 497, Pen. C.
Every public officer, and every deputy or clerk of any such officer,
and every other person receiving any moneys on behalf of or for
account of this state, or of any department of the government of this
state, or of any bureau or fund created by law, and in which this state
or the people thereof, are directly or indirectly interested, who either:

1. Appropriates to his own use, or to the use of any person not
entitled thereto, without authority of law, any money received by him
as such officer, clerk or deputy or otherwise, on behalf of this state or
the people thereof, or in which they are interested; or,

2. Knowingly keeps any false account or makes any false entry
or erasure in any account of or relating to any moneys so received by
him, on behalf of the state or the said people, or in which they are
interested; or,

3. Fraudulently alters, falsifies, conceals, destroys or obliterates
any such account; or,

4. Willfully omits or refuses to pay over to this state or its officer
or agent authorized by law to receive the same, any money received
by him under any duty imposed by law so to pay over the same,

Is guilty of a felony.

§ 7361. Other violations of law. Every officer or other per- § 498, Pen. C.
son mentioned in the last section, who willfully disobeys any pro-
visions of law regulating his official conduct, in cases other than those
specified in that section, is guilty of a misdemeanor.

§ 7362. Officer's fraud. Every public officer, being authorized § 499, Pen. C.
to sell or lease any property or make any contract in his official
capacity, who voluntarily becomes interested individually in such
sale, lease or contract, directly or indirectly, is guilty of a misde-
meanor.

§ 7363. Officer refusing to perform duty. Every register § 500, Pen. C.
of deeds, judge of the county court, state's attorney, county commis-
sioner, sheriff, coroner or county superintendent of common schools,
who willfully fails or refuses to perform the duties of his office ac-
cording to law, is guilty of a misdemeanor.

§ 3, c. 129, 1885.
am'd.

§ 7364. Agreement for false assessment. Every assessor, or county commissioner who enters into any contract, agreement or understanding with the owner of any personal property or his agent, whereby and pursuant to which such property is to be assessed at less than its cash value, in consideration that the owner of such property or his agent, shall remove or cause to be removed, said property, for the purpose of taxation, into the county, district or township of such assessor or commissioner, is guilty of a misdemeanor.

§ 3, c. 129, 1885.
am'd.

§ 7365. Same by owner. Every owner of personal property or his agent, who enters into any contract, agreement or understanding such as is mentioned in the last section and every person aiding or abetting the same, is guilty of a misdemeanor.

§ 3, c. 129, 1885.
am'd.

§ 7366. Punishment. Every person convicted of violating any of the provisions of the last two sections is punishable by imprisonment in the county jail not less than three and not exceeding six months, or by a fine not exceeding five hundred dollars or by both.

§ 501, Pen. C.

§ 7367. Obstructing collection of revenue. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes or other sums of money in which, or in any part of which the people of this state are directly or indirectly interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 502, Pen. C.

§ 7368. Provisions of section 7363 extended to other officers. The provisions of section 7363 shall also apply to county treasurers, justices of the peace and all other county and precinct officers.

§ 503, Pen. C.

§ 7369. Refusal of state officers to perform duty. Every state auditor, state treasurer, superintendent of public instruction for this state or any other state officer who willfully neglects or refuses to perform the duties of his office, as prescribed by law, is guilty of a misdemeanor.

§ 504, Pen. C.

§ 7370. Auctioneer to have but one place. No auctioneer in any town or county of this state, shall at one time have more than one place for carrying on the general business of an auctioneer.

§ 505, Pen. C.

§ 7371. What not to sell at other place. No such auctioneer shall expose to sale by public auction any articles liable to auction duties at any other place than that so designated, except goods sold in original packages, as imported pictures, household furniture, libraries, stationery and such bulky articles as have usually been sold in warehouses, or in the public streets or on the wharves.

§ 506, Pen. C.

§ 7372. Punishment. A violation of either of the last two sections is punishable by a fine not exceeding two hundred and fifty dollars for each offense.

§ 507, Pen. C.

§ 7373. Fraud by selling damaged goods. Every person carrying on, interested in or employed about the business of selling property or goods by auction, who sells any goods or property in a damaged condition, which he offers as sound or in a good condition, is guilty of a misdemeanor.

§ 508, Pen. C.

§ 7374. Must sell in day time. Exceptions. All sales of goods by public auction by a licensed auctioneer shall be made in the day time between sunrise and sunset, unless otherwise authorized by the law under which he holds his license, excepting:

1. Books, prints, pictures or stationery.

2. Goods sold in the original packages as imported, according to a printed catalogue, of which samples shall have been opened and

exposed to public view at least one day previous to the sale. Every person who violates the provisions of this section is guilty of a misdemeanor; and in addition to the punishment prescribed therefor by law, is forever disqualified after his conviction therefor, from being licensed to act as an auctioneer within this state.

§ 7375. Failure to render account. Every auctioneer, and § 509. Pen. C.
every partner or clerk of an auctioneer, and every person whatever in any way connected in business with an auctioneer, who willfully omits to render any semiannual or other account by law required to be rendered, at the time or in the manner prescribed by law, or who willfully omits to pay over any duties legally payable by him at the time and in the manner prescribed by law, is guilty of a misdemeanor.

§ 7376. Fraud committed by auctioneer. Every auctioneer, § 510. Pen. C.
and every partner or clerk of any auctioneer, and every person whatever in any way connected in business with an auctioneer, who commits any fraud or deceit, or by any fraudulent means whatever seeks to evade or defeat the provisions of the laws of this state relating to auctions, now in force or that may hereafter be enacted, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor is liable in treble damages to any party injured thereby.

§ 7377. False bill of lading. Every person whose duty it § 511. Pen. C.
may be to deliver to any collector of tolls upon any canal that hereafter may be constructed and owned by this state, a bill of lading of any property transported upon any such canal, who knowingly delivers a false bill of lading as true, or makes or signs a false bill of lading intending to be delivered as true, is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five times the value of any property omitted in such bill, or both.

§ 7378. Weighmaster making false entry. Every weigh- § 512. Pen. C.
master upon any canal that may hereafter be constructed and owned by this state and every clerk of such weighmaster, who knowingly makes a false entry of the weight of any boat or cargo of any boat navigating such canal, or who knowingly makes a false certificate of the light weight of any boat, is guilty of a misdemeanor.

§ 7379. Injuring public buildings. Every person who will- § 513. Pen. C.
fully burns, destroys or injures any public building or improvement in this state, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years.

§ 7380. Seizing military stores. Every person who enters § 514. Pen. C.
any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the state, and every person who enters any such place with intent so to do, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 7381. False statement regarding taxes. Every person § 515. Pen. C.
who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states any material matter which he knows to be false, is guilty of a misdemeanor.

CHAPTER 45.

ARSON.

- § 516, Pen. C. **§ 7382. Arson defined.** Arson is the willful and malicious burning of a building, with intent to destroy it.
- § 517, Pen. C. **§ 7383. Building defined.** Any house, edifice, structure, vessel or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building," within the meaning of the last section.
- § 518, Pen. C. **§ 7384. Inhabitable building defined.** Any building is deemed an "inhabitable building," within the meaning of this chapter, any part of which has usually been occupied by any person lodging therein at night.
- § 519, Pen. C. **§ 7385. Night time defined.** The words "night time," in this chapter include the period between sunset and sunrise.
- § 520, Pen. C. **§ 7386. Burning defined.** To constitute a burning within the meaning of section 7382 it is not necessary that the building set on fire should be destroyed. It is sufficient that the fire is applied so as to take effect upon the substance of the building.
- § 521, Pen. C. **§ 7387. Ownership defined.** To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in the possession of, or was actually occupying, such building or any part thereof.
- § 522, Pen. C. **§ 7388. Immaterial variance in proof.** An omission to designate, or error in designating in an information or indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the accused to prepare his defense.
- § 523, Pen. C. **§ 7389. Malice, when inferred.** Malice sufficient to constitute arson is inferred from proof that the accused committed an act of burning a building, and that some other person was rightfully in possession of or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupancy or should have intended to injure any person.
- § 524, Pen. C. **§ 7390. Burning without intent to destroy.** But the burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson.
- § 525, Pen. C. **§ 7391. Contiguous buildings.** When any appurtenance to any building is so situated with reference to such building, or when any building is so situated with reference to another building that the burning of one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other.
- § 526, Pen. C. **§ 7392. Degrees of arson.** Arson is distinguished into four degrees.
- § 527, Pen. C. **§ 7393. In first degree.** Maliciously burning in the night time an inhabited building, in which there is at the time some human being, is arson in the first degree.

§ 7394. **Exception. Appurtenance to building.** No warehouse, barn, shed or other outhouse, is a subject of arson in the first degree, unless it is immediately connected with, and forms part of an inhabited building. § 528, Pen. C.

§ 7395. **Arson in second degree.** Maliciously burning in the daytime an inhabited building, in which there is at the time some human being, is arson in the second degree. § 529, Pen. C.

§ 7396. **When burning in nighttime is.** Maliciously burning in the nighttime a building, not an inhabited building, but adjoining to or within the curtilage of an inhabited building in which there is at the time some human being, so that such inhabited building is endangered, even though it is not in fact injured by such burning, is arson in the second degree. § 530, Pen. C.

§ 7397. **Arson in third degree.** Maliciously burning in the daytime a building, the burning of which in the nighttime would be arson in the second degree, is arson in the third degree. § 531, Pen. C.

§ 7398. **When burning in nighttime is.** Maliciously burning in the nighttime any building, not the subject of arson in the first or second degree, including any house for public worship, school-house or public building belonging to the state, or to any county, city, town or village, any building in which have usually been deposited the papers of any public officer, and any barn, mill or manufactory, is arson in the third degree. § 532, Pen. C.

§ 7399. **Arson in fourth degree.** Maliciously burning in the daytime any building, the burning of which in the nighttime would be arson in the third degree, is arson in the fourth degree. § 533, Pen. C.

§ 7400. **Punishment for arson.** Arson is punishable by imprisonment in the penitentiary as follows: § 534, Pen. C.

1. Arson in the first degree, for any term not less than ten years.
2. Arson in the second degree, not exceeding ten years and not less than seven years.
3. Arson in the third degree, not exceeding seven years and not less than four years.
4. Arson in the fourth degree, not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year.

CHAPTER 46.

BURGLARY AND HOUSE BREAKING.

§ 7401. **Burglary in first degree defined.** Every person who breaks into and enters in the nighttime, the dwelling house of another, in which there is at the time some human being, with intent to commit some crime therein, either: § 535, Pen. C.

1. By forcibly bursting or breaking the wall, or an outer door, window or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter; or,

2. By breaking in any other manner, being armed with a dangerous weapon, or being assisted or aided by one or more confederates, then actually present; or,

3. By unlocking an outer door by means of false keys, or by picking the lock thereof,

Is guilty of burglary in the first degree.

§ 536, Pen. C.

§ **7402. In second degree defined.** Every person who breaks into any dwelling house in the daytime under such circumstances as would have constituted the crime of burglary in the first degree if committed in the nighttime, is guilty of burglary in the second degree.

§ 537, Pen. C.

§ **7403. Same. Breaking inner door.** Every person who, having entered the dwelling house of another in the nighttime, through an open outer door or window or other aperture not made by such person, breaks any inner door, window, partition or other part of such house, with intent to commit any crime, is guilty of burglary in the second degree.

§ 538, Pen. C.

§ **7404. Same.** Every person who, being lawfully in any dwelling house, breaks in the nighttime any inner door of the same house with intent to commit any crime, is guilty of burglary in the second degree.

§ 539, Pen. C.

§ **7405. Burglary in third degree.** Every person who breaks into any dwelling house in the nighttime, with intent to commit a crime, but under such circumstances as do not constitute the offense of burglary in the first degree, is guilty of burglary in the third degree.

§ 540, Pen. C.

§ **7406. Same. Other buildings.** Every person who breaks and enters, in the day or in the nighttime, either:

1. Any building within the curtilage of a dwelling house, but not forming a part thereof; or,

2. Any building or any part of any building, booth, tent, railroad car, vessel or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony,

Is guilty of burglary in the third degree.

§ 541, Pen. C.

§ **7407. Burglary in fourth degree.** Every person who breaks and enters the dwelling house of another, by day or by night, in such manner as not to constitute any burglary specified in the preceding section, with intent to commit a crime, is guilty of burglary in the fourth degree.

§ 542, Pen. C.

§ **7408. Same. Breaking out.** Every person who, having committed any crime in the dwelling house of another, breaks in the nighttime, any outer door, window shutter or other part of such house, to get out of the same, is guilty of burglary in the fourth degree.

§ 543, Pen. C.

§ **7409. Punishment for burglary.** Burglary is punishable by imprisonment in the penitentiary as follows:

1. Burglary in the first degree, for any term not less than ten years.

2. Burglary in the second degree, not exceeding ten years and not less than five.

3. Burglary in third degree, not less than one and not exceeding five years.

4. Burglary in the fourth degree, not less than one and not exceeding three years.

§ 544, Pen. C.

§ **7410. Having burglar's implements in possession.** Every person who, under circumstances not amounting to any felony, has in his possession in the nighttime any dangerous offensive weapon or instrument whatever, or any picklock, crow, key, bit, jack, jimmy,

nippers, pick, betty or other implement of burglary, with intent to break and enter any building, booth, tent, railroad car, vessel or other structure or erection, and to commit any felony therein, is guilty of a misdemeanor.

§ 7411. Unlawfully entering building. Every person who, under circumstances not amounting to any burglary, enters any building or part of any building, booth, tent, warehouse, railroad car, vessel or other structure or erection with intent to commit any felony, larceny or malicious mischief, is guilty of a misdemeanor. § 545, Pen. C.

§ 7412. Dwelling house defined. The term "dwelling house," as used in this chapter, includes every house or edifice, any part of which has usually been occupied by any person lodging therein at night, and any structure joined to and immediately connected with such a house or edifice. § 546, Pen. C.

§ 7413. Nighttime defined. The word "nighttime," in this chapter includes the period between sunset and sunrise. § 547, Pen. C.

CHAPTER 47.

FORGERY AND COUNTERFEITING.

§ 7414. Forgery in first degree. Every person who, with intent to defraud, forges, counterfeits or falsely alters: § 548, Pen. C.

1. Any will or codicil of real or personal property, or any deed or other instrument being or purporting to be the act of another, by which any right or interest in real property is or purports to be transferred, conveyed or in any way charged or affected; or,

2. Any certificate or indorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any officer duly authorized to make such certificate or indorsement; or,

3. Any certificate of the proof of any deed, will, codicil or other instrument which by law may be recorded or given in evidence, made or purporting to have been made by any court or officer duly authorized to make such certificate,

Is guilty of forgery in the first degree.

§ 7415. Same. Public securities. Every person who, with intent to defraud, forges, counterfeits or falsely alters: § 549, Pen. C.

1. Any certificate or other public security, issued or purporting to have been issued under the authority of this state by virtue of any law thereof, by which certificate or other public security, the payment of any money absolutely or upon any contingency is promised, or the receipt of any money or property acknowledged; or,

2. Any certificate of any share, right or interest in any public stock created by virtue of any law of this state issued or purporting to have been issued by any public officer, or any other evidence of any debt or liability, of the state, either absolute or contingent, issued or purporting to have been issued by any public officer; or,

3. Any indorsement or other instrument transferring or purporting to transfer the right or interest of any holder of any such certi-

cate, public security, certificate of stock, evidence of debt or liability, or of any person entitled to such right or interest,

Is guilty of forgery in the first degree.

§ 550, Pen. C.
am'd.

§ 7416. Second degree. Public and corporate seals.

Every person who, with intent to defraud, forges or counterfeits the great seal of this state, the seal of any public office authorized by law, the seal of any court of record, including the seal of the judge of the county court, or the seal of any corporation created by the laws of this state, or of any state, government or country, or any public seal authorized or recognized by the laws of this state or of any other state, government or country, or who falsely makes, forges or counterfeits any impression, purporting to be the impression of any such seal, is guilty of forgery in the second degree.

§ 551, Pen. C.

§ 7417. Same. Records and official returns. Every person who, with intent to defraud, falsely alters, destroys, corrupts or falsifies:

1. Any record of any will, codicil, conveyance or other instrument, the record of which is, by law, evidence; or,
2. Any record of any judgment in a court of record, or any enrollment of any decree of a court of equity; or,
3. The return of any officer, court or tribunal to any process of any court,

Is guilty of forgery in the second degree.

§ 552, Pen. C.

§ 7418. Same. Entry in record. Every person who, with intent to defraud, falsely makes, forges or alters, any entry in any book of records, or any instrument purporting to be any record or return specified in the last section, is guilty of forgery in the second degree.

§ 553, Pen. C.

§ 7419. Same. False certificates. If any officer authorized to take the acknowledgment or proof of any conveyance of real property, or of any other instrument which by law may be recorded, knowingly and falsely certifies that any such conveyance or instrument was acknowledged by any party thereto, or was proved by any subscribing witness, when in truth such conveyance or instrument was not acknowledged or proved as certified, he is guilty of forgery in the second degree.

§ 554, Pen. C.

§ 7420. Same. False plates. Every person who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit or other evidence of debt, issued by any banking corporation or association, or individual banker, incorporated or carrying on business under the laws of this state or of any other state, government or country, without the authority of such bank, or has or keeps in his custody or possession any such plate, without the authority of such bank, with intent to use or permit the same to be used for the purpose of taking therefrom any impression, to be passed, sold or altered, or has or keeps in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed for the purpose of being passed, sold or altered; or makes or causes to be made, or has in his custody or possession, any plate upon which are engraved any figures or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such bank, with the intent to use the same, or to permit them to be used for such purpose, is guilty of forgery in the second degree.

§ 7421. When plates deemed imitation. Every plate specified in the last section shall be deemed to be in the form and similitude of the genuine instrument imitated, in either of the following cases:

1. When the engraving on such plate resembles and conforms to such parts of the genuine instrument as are engraved; or,
2. When such plate is partly finished, and the part so finished resembles and conforms to similar parts of the genuine instrument.

§ 7422. Selling forged instruments. Every person who sells, exchanges or delivers for any consideration any forged or counterfeited promissory note, check, bill, draft or other evidence of debt or engagement for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intent to have the same uttered or passed, or who offers any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intent, or who receives any such note or other instrument upon a sale, exchange or delivery for any consideration with the like knowledge and intent, is guilty of forgery in the second degree.

§ 7423. Having same in possession. Every person who, with intent to defraud, has in his possession any forged, altered or counterfeited negotiable note, bill, draft or other evidence of debt, issued or purporting to have been issued by any corporation or company duly authorized for that purpose by the laws of this state or of any other state, government or country, the forgery of which is hereinbefore declared to be punishable, knowing the same to be forged, altered or counterfeited, with intent to utter the same as true or as false, or to cause the same to be so uttered, is guilty of forgery in the second degree.

§ 7424. Forgery in fourth degree. Every person who has in his possession any forged or counterfeited instrument, the forgery of which is hereinbefore declared to be punishable, other than such as are enumerated in the last section, knowing the same to be forged, counterfeited or falsely altered, with intent to injure or defraud by uttering the same as true or as false, or by causing the same to be so uttered, is guilty of forgery in the fourth degree.

§ 7425. Second degree. Issuing false certificates. Every officer, and every agent of any corporation or joint stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed, with intent to issue, sell or pledge or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges or causes to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, whether of full paid shares or otherwise, or of any interest in its property or profits, or of any certificate or other evidence of such ownership, transfer or interest, or any instrument purporting to be a certificate or other evidence of such ownership, transfer or interest, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or other managing body of such corporation or association having authority to issue the same, is guilty of forgery in the second degree.

§ 7426. Same. Reissuing canceled certificates. Every officer, and every agent of any corporation or joint stock association

formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully reissues, sells or pledges, or causes to be reissued, sold or pledged, any surrendered or canceled certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation or association, or of an interest in its property or profits, with intent to defraud, is guilty of forgery in the second degree.

§ 561, Pen. C.

§ 7427. Same. False evidence of debt. Every officer, and every agent of any corporation, municipal or otherwise, of any joint stock association formed or existing under or by virtue of the laws of this state, or of any other state, government or country, who, within this state, willfully signs or procures to be signed with intent to issue, sell or pledge, or to cause to be issued, sold or pledged, or who willfully issues, sells or pledges, or causes to be issued, sold or pledged, any false or fraudulent bond or other evidence of debt against such corporation or association, or any instrument purporting to be a bond or other evidence of debt against such corporation or association, the signing, issuing, selling or pledging of which has not been duly authorized by the board of directors or common council or other managing body or officers of such corporation having authority to issue the same, is guilty of forgery in the second degree.

§ 562, Pen. C.

§ 7428. Same. Counterfeiting coin. Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign government or country, with intent to sell, utter, use or circulate the same as genuine, within this state, is guilty of forgery in the second degree.

§ 563, Pen. C.

§ 7429. Same. Counterfeiting coin for export. Every person who counterfeits any gold or silver coin, whether of the United States or of any foreign country or government, with intent to export the same, or permit them to be exported to injure or defraud any foreign government, or the subjects thereof, is guilty of forgery in the third degree.

§ 564, Pen. C.

§ 7430. Third degree. Forging process of court. Every person who, with intent to defraud, falsely makes, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate or officer, or being or purporting to be, any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be, any certificate, order or allowance by any competent court or officer, or being or purporting to be, any license or authority authorized by any statute; or,

2. Any instrument or writing, being or purporting to be the act of another, by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished, or by which any rights or property whatever, are or purport to be transferred, conveyed, discharged, diminished or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false making, altering, forging or counterfeiting, any person may be affected, bound or in any way injured in his person or property,

Is guilty of forgery in the third degree.

§ 565, Pen. C.

§ 7431. Same. False entries in public books. Every person who, with intent to defraud, makes any false entry or falsely alters any entry made in any book of accounts kept in the office of the auditor of this state, or in the office of the treasurer of this state, or of any county treasurer, by which any demand or obligation, claim,

right or interest, either against or in favor of this state, or any county or town, or any individual, is or purports to be, discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the third degree.

§ 7432. **Same. Forging passenger tickets.** Every person § 566, Pen. C.
who, with intent to defraud, forges, counterfeits or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or in any vessel or other public conveyance; and every person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

§ 7433. **Same. Forging United States stamps.** Every § 567, Pen. C.
person who forges, counterfeits or alters any postage or revenue stamp of the United States, or who sells or offers or keeps for sale, as genuine or as forged, any such stamp, knowing it to be forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

§ 7434. **Same. False entries in corporate books.** Every § 568, Pen. C.
person who with intent to defraud, makes any false entry, or falsely alters any entry made in any book of accounts kept by any corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit is or purports to be discharged, diminished, increased, created or in any manner affected, is guilty of forgery in the third degree.

§ 7435. **Fourth degree. False entries by corporate officers.** § 569, Pen. C.
Every person who, being a member or officer, or in the employment of any corporation, association or partnership, falsifies, alters, erases, obliterates or destroys any account or book of accounts or records belonging to such corporation, association or partnership or appertaining to their business, or makes any false entries in such account or book, or keeps any false account in such business, with intent to defraud his employers, or to conceal any embezzlement of their money or property, or any defalcation or other misconduct, committed by any person in the management of their business, is guilty of forgery in the fourth degree.

§ 7436. **Same. Counterfeit coin.** Every person who has in § 570, Pen. C.
his possession any counterfeit of any gold or silver coin, whether of the United States, or of any foreign country or government, knowing the same to be counterfeited, with intent to sell, utter, use, circulate or export the same as true or as false, or by causing the same to be so uttered or passed, is guilty of forgery in the fourth degree.

§ 7437. **Punishment of forgery.** Forgery is punishable by § 571, Pen. C.
imprisonment in the penitentiary as follows:

1. Forgery in the first degree, by imprisonment not less than ten years.
2. Forgery in the second degree, not exceeding ten years and not less than five.
3. Forgery in the third degree, not less than one and not exceeding five years.

4. Forgery in the fourth degree, by imprisonment in the penitentiary not less than one and not exceeding two years, or by imprisonment in a county jail not exceeding one year.

§ 572, Pen. C. **§ 7438. Uttering forged instrument or coin.** Every person who, with intent to defraud, utters or publishes as true, any forged, altered or counterfeited instrument, or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which is hereinbefore declared to be punishable, knowing such instrument or coin to be forged, altered or counterfeited, is guilty of forgery in the same degree as if he had forged, altered or counterfeited the instrument or coin so uttered, except as in the next section specified.

§ 573, Pen. C. **§ 7439. Exception. Receipt in good faith.** If it appears on the trial of the information or indictment, that the accused received such forged or counterfeited instrument or coin from another, in good faith, and for a good and valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, the jury may find the defendant guilty of forgery in the fourth degree.

§ 574, Pen. C. **§ 7440. Signing own as name of another.** Every person who, with intent to defraud, makes or subscribes any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and utters or passes such instrument, under the pretense that it is the act of another who bears the same name, is guilty of forgery in the same degree as if he had forged the instrument of a person bearing a different name from his own.

§ 575, Pen. C. **§ 7441. Indorsing own as name of another.** Every person who, with intent to defraud, indorses any negotiable instrument in his own name, and utters or passes such instrument, under the fraudulent pretense that it is indorsed by another person who bears the same name, is guilty of forgery in the same degree as if he had forged the indorsement of a person bearing a different name from his own.

§ 576, Pen. C. **§ 7442. Erasures and obliterations.** The total or partial erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property is or is intended to be created, increased, discharged, diminished or in any manner affected, is forgery in the same degree as the false alteration of any part of such instrument or writing.

§ 577, Pen. C. **§ 7443. Writing and written defined.** Every instrument partly printed and partly written, or wholly printed with a written signature thereto, and every signature of an individual, firm or corporation, or of any officer of such body, and every writing purporting to be such signature, is a writing or a written instrument, within the meaning of the provisions of this chapter.

§ 578, Pen. C. **§ 7444. Fictitious name to instrument.** The false making or forging of an evidence of debt purporting to have been issued by any corporation and bearing the pretended signature of any person as an agent or officer of such corporation, is forgery in the same degree as if such person was at the time an officer or agent of such corporation; notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

CHAPTER 48.

LARCENY.

§ 7445. **Larceny defined.** Larceny is the taking of personal property accomplished by fraud or stealth, and with intent to deprive another thereof. § 580, Pen. C.

§ 7446. **Same. Appropriating lost property.** One who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made such effort to find the owner and restore the property to him as the circumstances render reasonable and just, is guilty of larceny. § 581, Pen. C.

§ 7447. **Degrees of larceny.** Larceny is divided into two degrees: the first of which is termed grand larceny, the second petit larceny. § 582, Pen. C.

§ 7448. **Grand and petit larceny defined.** Grand larceny is larceny committed in either of the following cases: § 583, Pen. C.

1. When the property taken is of value exceeding twenty dollars.
2. When such property, although not of value exceeding twenty dollars in value, is taken from the person of another.

Larceny in other cases is petit larceny.

§ 7449. **Punishment of grand larceny.** Grand larceny is punishable by imprisonment in the penitentiary not less than one and not exceeding five years. § 584, Pen. C.

§ 7450. **Punishment of petit larceny.** Petit larceny shall be punishable by a fine of not less than ten dollars or more than one hundred dollars, or imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment, at the discretion of the court. § 2, c. 25, 1879.

§ 7451. **Grand larceny in house or vessel.** When it appears upon the trial of an information or indictment for grand larceny that the larceny alleged was committed in any dwelling house or vessel, the offender may be punished by imprisonment in the penitentiary not less than one and not exceeding eight years. § 586, Pen. C.

§ 7452. **Larceny in night time from person.** When it appears upon such trial, that such larceny was committed by stealing in the night time, from the person of another, the offender may be punished by imprisonment in the penitentiary not less than one and not exceeding ten years. § 587, Pen. C.

§ 7453. **Larceny of written instruments. Value.** If the thing stolen consists of any evidence of debt or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, as the case may be, shall be deemed the value of the thing stolen. § 588, Pen. C.

§ 7454. **Value of passage ticket.** If the thing stolen is any ticket, or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad, or in any vessel or other public conveyance, the price at which tickets entitling

a person to a like passage are usually sold by the proprietors of such conveyance, shall be deemed the value of such ticket.

§ 590, Pen. C. **§ 7455. Value. Securities never issued.** All the provisions of this chapter shall apply when the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, though the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

§ 591, Pen. C. **§ 7456. Larceny of part of realty.** All the provisions of this chapter shall apply when the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if such thing had been severed by another person at some previous time.

§ 592, Pen. C. **§ 7457. Larceny of wrecked goods.** Every person who takes away any goods from any stranded or wrecked steamboat or other vessel, or any goods floating on the water, or goods cast by the water upon the shore, or goods lodged upon drifts, snags or other obstructions in a water course, or goods found in any creek, or who knowingly becomes possessed of any such, and does not deliver the same within forty-eight hours thereafter, to the sheriff or the coroner of the county where the same is found, is guilty of a misdemeanor.

§ 593, Pen. C. **§ 7458. Buying or receiving stolen property.** Every person who buys or receives, in any manner, upon any consideration, any personal property of any value whatsoever, that has been stolen from any other, knowing the same to have been stolen, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or in the county jail not exceeding six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 594, Pen. C. **§ 7459. Fraudulent consumption of gas.** Every person who, with intent to defraud, makes or causes to be made, any pipe or other instrument or contrivance, and connects the same or causes it to be connected, with any pipe laid for conducting illuminating gas, so as to conduct gas to a point where the same may be consumed without its passing through the meter provided for registering the quantity consumed, or in any other manner so as to evade paying therefor, and every person who with like intent injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor.

§ 595, Pen. C. **§ 7460. Stealing without, and bringing into state.** Every person who steals the property of another in any other state or country, and brings the same into this state, may be convicted and punished in the same manner as if such larceny had been committed in this state; and such larceny may be charged to have been committed in any county into or through which such stolen property has been brought.

CHAPTER 49.

EMBEZZLEMENT.

§ 7461. **Embezzlement defined.** Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted. § 596. Pen. C.

§ 7462. **Fraudulent appropriation by officer of corporation.** If any person, being an officer, director, trustee, clerk, servant or agent of any association, society or corporation, public or private, fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control in virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement. § 597. Pen. C.

§ 7463. **When carrier guilty of.** If any carrier or other person having under his control personal property for the purpose of transportation for hire, fraudulently appropriates it to any use or purpose inconsistent with the safe-keeping of such property and its transportation according to his trust, he is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof or not. § 598. Pen. C.

§ 7464. **Fraudulent appropriation by trustee.** If any person being a trustee, banker, merchant, broker, attorney, agent, assignee in trust, receiver, executor, administrator or collector, or being otherwise entrusted with or having in his control property for the use of any other person, or for any public or benevolent purpose, fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, he is guilty of embezzlement. § 599. Pen. C.

§ 7465. **Fraudulent conversion by bailee.** If any person being entrusted with any property as bailee, or with any power of attorney for the sale or transfer thereof, fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, he is guilty of embezzlement, whether he has broken the package or otherwise determined the bailment or not. § 600. Pen. C.

§ 7466. **Fraudulent appropriation by clerk or servant.** If any clerk or servant of any private person or partnership or corporation, except apprentices and persons within the age of eighteen years, fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of any other person which has come into his control or care by virtue of his employment as such clerk or servant, he is guilty of embezzlement. § 601. Pen. C.

§ 7467. **Distinct taking not necessary.** A distinct act of taking is not necessary to constitute embezzlement, but any fraudulent appropriation, conversion or use of property, coming within the above prohibitions is sufficient. § 602. Pen. C.

§ 7468. **Evidence of debt.** Any evidence of debt, negotiable by delivery only, and actually executed, is equally the subject of embezzlement whether it has been delivered or issued as a valid instrument or not. § 603. Pen. C.

§ 7469. **Claim of title. Good faith.** Upon any information or indictment for embezzlement it is a sufficient defense that the § 604. Pen. C.

property was appropriated openly and avowedly, and under a claim of title preferred in good faith even though such claim is untenable. But this provision shall not excuse the retention of the property of another, to offset or pay a demand held against him.

§ 605, Pen. C.

§ 7470. Intent to restore no defense. The fact that the accused intended to restore the property embezzled, is no ground of defense or of mitigation of punishment, if it has not been restored before a complaint has been laid before a magistrate, charging the commission of the offense.

§ 606, Pen. C.

§ 7471. Mitigation of punishment. Whenever it is made to appear that prior to any complaint laid before a magistrate charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled or any part thereof, such fact is not a ground of defense to the information or indictment, but it authorizes the court to mitigate punishment in its discretion.

§ 607, Pen. C.

§ 7472. Punishment of embezzlement. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled. And when the property embezzled is an evidence of debt or right in action, the sum due upon it or secured to be paid by it, shall be taken as its value.

CHAPTER 50.

EXTORTION.

§ 608, Pen. C.

§ 7473. Extortion defined. Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right.

§ 609, Pen. C.

§ 7474. Threats constituting extortion. Fear such as will constitute extortion, may be induced by a threat, either:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,
2. To accuse him, or any relative of his or member of his family, of any crime; or,
3. To expose, or impute to him or them, any deformity or disgrace; or,
4. To expose any secret affecting him or them.

§ 610, Pen. C.

§ 7475. Punishment of extortion. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force or any threat such as is mentioned in the last section, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years.

§ 611, Pen. C.

§ 7476. Same under official right. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor.

§ 612, Pen. C.

§ 7477. Obtaining signature. Every person who, by any extortionate means, obtains from another his signature to any paper

or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge or right of action created, is punishable in the same manner as if the actual delivery of such property or payment of the amount of such debt, demand, charge or right of action were obtained.

§ 7478. Sending threatening letters. Every person who, § 613. Pen. C.
with intent to extort any money or other property from another, sends to any person any letter or other writing, whether subscribed or not, expressing or implying or adapted to imply, any threat such as is specified in section 7474, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

§ 7479. Attempts to extort money. Every person who un- § 614. Pen. C.
successfully attempts, by means of any verbal threat, such as is specified in section 7474, to extort money or other property from another, is guilty of a misdemeanor.

CHAPTER 51.

TRUSTS, POOLS AND COMBINATIONS REGARDING GRAIN AND STOCK.

§ 7480. Combinations among dealers in produce. Every § 1, c. 173, 1890.
person who is a dealer in, or buyer of grain, hogs, cattle or stock, of am'd.
any kind, and who enters into any contract, agreement, understanding or combination with any other person, not his partner, who is a like dealer or buyer, either:

1. For the pooling of the price of grain, hogs, cattle or stock, of any kind, between himself and such other person, or others; or,

2. For the division between them of the aggregate or net proceeds of the earnings or profits of such dealers or buyers or any portion thereof; or,

3. For fixing or establishing the price which such dealers or buyers shall pay or offer for grain, hogs, cattle or stock of any kind,

Is guilty of a misdemeanor.

§ 7481. Combinations to fix prices. Every person who § 1, c. 174, 1890.
creates, enters into or becomes a member of or party to any pool, am'd.
trust, combination or confederation, or makes or enters into any contract, agreement or understanding therefor, with another person, either:

1. To limit or fix the price of any commodity, article or merchandise; or,

2. To limit or fix the amount or quantity of any commodity, article or merchandise to be manufactured, mined, produced or sold in this state.

Is guilty of a misdemeanor.

§ 7482. Punishment. Every corporation whether organized § 3, c. 173, 1890.
under the laws of this or any other state or country, and doing busi- am'd.
ness in this state, and every partnership or association of individuals so doing business, which shall violate any of the provisions of the last two sections, is guilty of a misdemeanor, and upon conviction

thereof, is punishable by a fine of not less than one and not exceeding twenty per centum of the capital stock of such corporation or of the amount invested in such company, firm or association.

§ 3, c. 174, 1890.
am'd.

§ 7483. Violations by corporate officers. Every person who, as president, manager, director, stockholder, receiver or agent or other person of any corporation, on behalf of such corporation as is mentioned in the last section, or as a member of any partnership or association of individuals, violates any of the provisions of this chapter, is guilty of a misdemeanor.

§ 2, c. 173, 1890.
am'd.

§ 7484. No privilege from testifying. No person not a defendant on trial shall be excused or claim any immunity from testifying, or producing his records, contracts, books or papers, or the records, contracts, books or papers in his possession or under his control belonging to any other person, partnership, corporation or association, upon the trial of a prosecution for the violation of any of the provisions of this chapter, but such testimony or evidence shall not be used against the person so testifying or producing records, contracts, books or papers upon a prosecution for violating any of the provisions of this chapter.

CHAPTER 52.

FALSE PERSONATIONS AND CHEATS.

§ 615, Pen. C.

§ 7485. Falsely personating another. Every person who falsely personates another, and in such assumed character, either:

1. Marries or pretends to marry or to sustain the marriage relation toward another, with or without the connivance of such other person: or,

2. Becomes bail or surety for any party, in any proceeding whatever, before any court or officer authorized to take such bail or surety: or,

3. Subscribes, verifies, publishes, acknowledges or proves, in the name of another person, any written instrument, with intent that the same may be delivered or used as true; or,

4. Does any other act whereby, if it were done by the person falsely personated, he might in any event become liable to any suit or prosecution or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating or to any other person, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 616, Pen. C.

§ 7486. Falsely personating and receiving. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person who is not entitled thereto, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 617, Pen. C.

§ 7487. Personating officer and others. Every person who falsely personates any public officer, civil or military, or any fireman or any private individual having special authority by law to perform

any act affecting the rights or interests of another, or assumes, without authority, any uniform or badge by which such are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, vexed or annoyed, is guilty of a misdemeanor.

§ 7488. **Unlawfully wearing grand army badge.** Every person who is found wearing the badge of the Grand Army of the Republic, and who is not entitled so to do by being a member thereof, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than ten and not exceeding twenty-five dollars for each and every offense. One-fourth of any fine imposed under the provisions of this section, when collected, shall be paid to the complainant. Justices of the peace shall have jurisdiction to try and determine complaints hereunder, subject to the right of the defendant to appeal to the district court.

§§ 1, 2, c. 187,
1887,
am'd.

§ 7489. **Obtaining signature or property by false pretenses.** Every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding three times the value of the money or property so obtained, or by both such fine and imprisonment.

§ 618, Pen. C.

§ 7490. **For charitable purposes.** Every person who designedly, by color or aid of any false token or writing or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property for any alleged charitable or benevolent purpose whatever, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years or in a county jail not exceeding one year, or by a fine not exceeding the value of the money or property so obtained, or by both such fine and imprisonment.

§ 619, Pen. C.

§ 7491. **Punishment for certain false pretenses.** If the false token by which any money or property is obtained, in violation of sections 7489 and 7490, is a promissory note or other negotiable evidence of debt purporting to be issued by or under the authority of any banking company or corporation not in existence, the person guilty of such cheat is punishable by imprisonment in the penitentiary not less than one and not exceeding seven years, instead of by the punishments prescribed by those sections.

§ 620, Pen. C.

§ 7492. **When check is false token.** The use of a matured check or other order for the payment of money, as a means of obtaining any signature, money or property, such as is specified in the last two sections, by a person who knows that a drawer thereof is not entitled to draw for the sum specified therein, upon the drawee, is the use of a false token within the meaning of those sections, although no representation is made in respect thereto.

§ 621, Pen. C.

§ 7493. **Mock auctions.** Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years or in a county jail not exceeding one

§ 622, Pen. C.

year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, he forfeits any license he may hold to act as an auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this state.

CHAPTER 53.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

- § 623, Pen. C. **§ 7494. Officer willfully destroying vessel.** Every captain or other officer or person in command or charge of any vessel, who, within this state, willfully wrecks, sinks or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the penitentiary for life.
- § 624, Pen. C. **§ 7495. Others, same.** Every person other than such as are embraced within the last section, who is guilty of an act therein prohibited, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three.
- § 625, Pen. C. **§ 7496. Fitting out vessel with intent to wreck.** Every person guilty of fitting out any vessel, or lading any cargo on board of any vessel, with intent to cause or permit the same to be wrecked, sunk or otherwise injured or destroyed, and thereby to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three.
- § 626, Pen. C. **§ 7497. Making false manifest.** Every person guilty of preparing, making or subscribing, any false or fraudulent manifest, invoice, bill of lading, boat's register or protest, with intent to defraud another, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both.

CHAPTER 54.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

- § 627, Pen. C. **§ 7498. Destroying property insured.** Every person who willfully burns or in any other manner injures or destroys any property whatever, which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same is the property of such person or of any other, is punishable by imprisonment in the penitentiary not exceeding seven years and not less than four.

§ 7499. **Presenting false proof of loss.** Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey, affidavit, proof of loss or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both. § 628, Pen. C.

CHAPTER 55.

FALSE WEIGHTS AND MEASURES.

§ 7500. **False weights and measures.** If any person with intent to defraud, uses a false balance, weight or measure, in the weighing or measuring of anything whatever that is purchased, sold, bartered, shipped or delivered, for sale or barter, or that is pledged or given in payment, he shall be punished by fine not exceeding one hundred dollars nor less than five dollars, or by imprisonment in a county jail not more than thirty days, or by both such fine and imprisonment, and shall be liable to the injured party in double the amount of damages. § 629, Pen. C.

§ 7501. **Retaining same.** Every person who retains in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it, or permits it to be used in violation of the last section, shall be punished as therein provided. § 630, Pen. C.

§ 7502. **Officer may seize same.** Every person who is authorized or enjoined by law to arrest another person for a violation of sections 7500 and 7501, is equally authorized and enjoined to seize any false weights or measures found in the possession of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken. § 631, Pen. C.

§ 7503. **May be tested and destroyed.** The magistrate to whom any weight or measure is delivered, pursuant to the last section, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, cause the same to be tested by comparison with standards conformable to law; and if he finds it to be false, he shall cause it to be destroyed, or to be delivered to the state's attorney of the county in which the accused is liable to prosecution or trial, as the interests of justice in his judgment may require. § 632, Pen. C.

§ 7504. **Duty of state's attorney.** Upon the conviction of the accused, such state's attorney shall cause any weight or measure in respect whereof the accused stands convicted, and which remains in the possession or under the control of such state's attorney, to be destroyed. § 633, Pen. C.

§ 7505. **Stamping false weight or tare.** Every person who knowingly marks or stamps false or short weight or false tare on any § 634, Pen. C.

cask or package, or knowingly sells or offers for sale any cask or package so marked, is guilty of a misdemeanor.

CHAPTER 56.

ILLEGAL BRANDING OF STOCK.

- § 1. c. 42, 1891.
am'd. **§ 7506. Unlawfully branding, or stealing stock.** Every person who, willfully, either:
1. Marks, brands, kills or sells; or,
 2. Causes to be marked, branded, killed or sold; or,
 3. Steals, takes, drives or leads away, any horse, mule, cow, calf, sheep, swine or other animal, the property of another, is guilty of a felony, and upon conviction thereof is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine of not less than five hundred and not exceeding one thousand dollars, or by both.
- § 2. c. 42, 1891.
am'd. **§ 7507. Willfully cutting off ears from stock.** Every person who, willfully cuts off either or both ears of any horse, colt, mule, cow, calf, ox, sheep or swine, is guilty of a misdemeanor and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than twenty-five and not exceeding one hundred dollars for each and every animal so maimed.
- § 3. c. 42, 1891.
am'd. **§ 7508. Willfully driving stock from range.** Every person who, willfully drives or causes to be driven, any horses, mules, cattle, sheep or swine from the customary range of such animals, without the permission of the owner thereof, is guilty of a misdemeanor, and upon conviction thereof, is punishable by imprisonment in the county jail not less than thirty days and not exceeding six months, or by a fine of not less than fifty and not exceeding one hundred dollars, or by both.
- § 1. c. 41, 1891.
am'd. **§ 7509. Unlawful branding of stock.** Every person who, at any time, between the first day of November and the first day of May following, brands or marks any horse, colt, mule, ass, cow, calf, sheep, swine or other animal that is running at large, is guilty of a misdemeanor, and upon conviction thereof, is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than twenty-five and not exceeding one hundred dollars, or by both.
- § 1. c. 41, 1891.
am'd. **§ 7510. Exception.** The provisions of the last section shall not be construed to prevent the owner of any such animals as are mentioned therein, from branding them on his own premises at any time in the presence of two or more responsible citizens of this state as witnesses of such branding.

CHAPTER 57.

FRAUDULENT INSOLVENCIES BY INDIVIDUALS.

§ 7511. Fraudulent conveyance. Every person who, being § 635, Pen. C.
a party to any conveyance or assignment of any real or personal property or of any interest therein, made or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, and every person being privy to or knowing of such conveyance, assignment or charge, who willfully puts the same in use as having been made in good faith, is guilty of a misdemeanor.

§ 7512. Removing property to avoid execution. Every § 636, Pen. C.
person who removes any of his property out of any county, with intent to prevent the same from being levied upon by any execution or attachment, or who secretes, assigns, conveys or otherwise disposes of any of his property, with intent to defraud any creditor, or to prevent such property being made liable for the payment of his debts, and every person who receives any such property with such intent, is guilty of a misdemeanor.

§ 7513. Unlawfully preferring creditors. Every person § 637, Pen. C.
who, knowing that his property is insufficient for the payment of all his lawful debts, assigns, transfers or delivers any property for the benefit of any creditor or creditors, upon any trust or condition, that any creditor shall receive a preference or priority over any other, except in the cases in which such preference is expressly allowed to be given by law, or with intent to create such preference or priority, is guilty of a misdemeanor.

§ 7514. Frauds in insolvencies. Every person who, upon § 638, Pen. C.
making or prosecuting any application for a discharge as an insolvent debtor, under the provisions of any law now in force or that may hereafter be enacted, either:

1. Fraudulently presents, or authorizes to be presented on his behalf such application, in a case in which it is not authorized by law; or,

2. Makes or presents to any court or officer, in support of such application, any petition, schedule, book, account, voucher or other paper or document, knowing the same to contain any false statement; or,

3. Fraudulently makes and exhibits, or alters, obliterates or destroys any account or voucher relating to the condition of his affairs, or any entry or statement in such account or voucher; or,

4. Practices any fraud upon any creditor, with intent to induce him to petition for or consent to such discharge; or,

5. Conspires with or induces any person fraudulently to unite as creditor in any petition for such discharge, or to practice any fraud in aid thereof,

Is guilty of a misdemeanor.

CHAPTER 58.

FRAUDULENT INSOLVENCIES BY CORPORATIONS, AND
OTHER FRAUDS IN THEIR MANAGEMENT.

§ 639, Pen. C.

§ 7515. Fictitious subscriptions for stock. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; and every person who signs to any subscription or agreement, the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 640, Pen. C.

§ 7516. Fraud in procuring organization. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years.

§ 641, Pen. C.

§ 7517. Unlawful use of names. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 643, Pen. C.
am'd.

§ 7518. Unlawful loans by bank directors. Every director of any corporation having banking powers, who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either:

1. To make any loan or discount, by which the whole amount of the loans and discounts of the corporation is made to exceed three times its capital stock then paid in and actually possessed; or,

2. To make any loan or discount to any director of such corporation, or upon paper upon which any such director is responsible, for an amount greater than is allowed by law,

Is guilty of a misdemeanor.

§ 644, Pen. C.

§ 7519. Unauthorized loans not invalid. Nothing in the last section shall render any loan made by the directors of any such corporation in violation thereof, invalid.

§ 645, Pen. C.

§ 7520. Sale or pledge of bank notes. Every officer or agent of any corporation having banking powers, who sells or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes as a security for a loan or for any liability of such corporation, is

punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 7521. Unlawful issue of bank notes. Every officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation, to an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both. § 546, Pen. C.

§ 7522. Unlawful guarantee or indorsement. Every officer or agent of any banking corporation, who makes or delivers any guarantee or indorsement upon behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor. § 647, Pen. C.

§ 7523. Bank officer overdrawing account. Every officer, agent, teller, clerk or servant of any bank, banking association or savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains money, notes or funds of such bank, is guilty of a misdemeanor. § 648, Pen. C.

§ 7524. Insolvent bank or officer receiving deposit. No bank, banking house, exchange broker or deposit office or firm, company, corporation or party engaged in the banking, broker or deposit business, shall accept or receive on deposit, with or without interest, any moneys, bank bills, or notes or United States notes or United States treasury notes or currency or other notes, bills or drafts circulating as money or currency, when such bank, banking house, exchange broker or deposit office, firm, company or corporation or party is insolvent; and if any such bank, banking house, exchange broker or deposit office, firm, company, corporation or party shall receive or accept on deposit any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party or managing party thereof, knowing of such insolvency, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby, any such deposit as aforesaid, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in the county jail not to exceed one year, or by both fine and imprisonment, the fine not to exceed ten thousand dollars. § 1, c. 5, 1879,
§§ 25, 26, c. 27,
1893,
am'd.

§ 7525. Omitting to enter receipt of property. Every director, officer or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association, is guilty of a misdemeanor. § 649, Pen. C.

§ 7526. Fraudulent destruction of books. Every director, officer, agent or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in the making of any § 650, Pen. C.

false entry, or omits or concurs in omitting to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the penitentiary not less than one and not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 651, Pen. C.

§ 7527. Publishing false report. Every director, officer or agent of any corporation or joint stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than as are mentioned in sections 7516 and 7517, or willfully refuses or neglects to make or deliver any written report, exhibit or statement required by law, is guilty of a misdemeanor.

§ 652, Pen. C.

§ 7528. Refusing to permit inspection of books. Every officer or agent of any corporation having or keeping an office within this state, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 653, Pen. C.

§ 7529. Insolvencies deemed fraudulent. Every insolvency of a moneyed corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 654, Pen. C.

§ 7530. How fraudulent acts punishable. In every case of a fraudulent insolvency of a moneyed corporation, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this code, or any of the acts which are specified as continuing in force, is guilty of a misdemeanor.

§ 655, Pen. C.

§ 7531. How violation of duty punishable. Every director of any moneyed corporation who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director, by law, the punishment for which act or omission is not otherwise prescribed by this code, or by some of the acts which it specifies as continuing in force, is guilty of a misdemeanor.

§ 658, Pen. C.

§ 7532. When director deemed to have knowledge. Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors, is a violation of this chapter.

§ 659, Pen. C.

§ 7533. When director presumed to have assented. Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding or omission of such directors, in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

§ 660, Pen. C.

§ 7534. Same when director was absent from meeting. Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is

deemed to have concurred therein, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not, within that time, cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

§ 7535. **Foreign corporation, no defense.** It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another state, government or country, if it was one carrying on business or keeping an officer thereof, within this state. § 661. Pen. C.

§ 7536. **Director defined.** The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation by whatever name such persons are described in its charter, or known by law. § 662. Pen. C.

CHAPTER 59.

REQUISITES OF STEAMBOAT TICKETS.

§ 7537. **Delay in departure of vessels.** Whenever the departure of any vessel, for a passage on board of which, to a port without this state, any ticket or instrument has been sold, is delayed more than two days after the day of departure mentioned in such ticket, the person holding such ticket is entitled to his board and lodging in such vessel, without any additional charge, from the second day after the day named for departure, until the actual departure of such vessel, and is also entitled to receive from the owners or consignees of such vessel fifty cents per day for each day of such detention. And in case of refusal on the part of the owners, consignees or master of the vessel so detained to comply with this section, the person holding such ticket is entitled to recover back from the owners or consignees the amount of passage paid by him, together with his damages for such detention, not exceeding fifty dollars. § 671. Pen. C.

§ 7538. **Passenger ticket. Missouri river. Requisites.** Every ticket or instrument issued as evidence of a right of passage upon the Missouri river, from any port in this state to any port of any other state or territory, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, and every receipt for money paid for any such ticket or instrument must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company or line, if any, to which such vessel belongs, the place from which such passage is to commence, the place where such passage is to terminate, the day of the month and year upon which the voyage is to commence, the name of the person or persons purchasing such ticket or instrument or receiving such order, certificate or receipt and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent. § 672. Pen. C.

§ 673. Pen. C. **§ 7539. Violation of last section. Punishment.** Every person who issues, sells or delivers to another, any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

CHAPTER 60.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLES TO MERCHANDISE.

§ 677. Pen. C. **§ 7540. Bills of lading. Fraudulent. Punishment.** Every person being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, or by which it appears that any merchandise of any description has been shipped on board any vessel or delivered to any railroad, express or transportation company or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 678. Pen. C. **§ 7541. Warehouse receipts. Fraudulent. Punishment.** Every person carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for any merchandise of any description which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise or as security for any indebtedness, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 679. Pen. C. **§ 7542. Same. Exceptions.** No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, case, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the accused knew that such marks, labels or brands were untrue.

§ 680. Pen. C. **§ 7543. Warehouse receipt. Duplicate.** Every person mentioned in sections 7540 and 7541, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the peniten-

tiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

§ 7544. Selling goods without consent of holder of bill of lading. Every person mentioned in sections 7540 and 7541, who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. § 681, Pen. C.

§ 7545. Bill of lading or receipt must be canceled. Every person, such as mentioned in section 7541, who delivers to another any merchandise for which any bill of lading, receipt or voucher has been issued, unless such receipt or voucher bore upon its face the words "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, or unless, in the case of a partial delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine not exceeding one thousand dollars, or both. § 682, Pen. C.

§ 7546. When last two sections do not apply. The last two sections do not apply when property is demanded by virtue of process of law. § 683, Pen. C.

CHAPTER 61.

MALICIOUS INJURIES TO RAILROADS, HIGHWAYS, BRIDGES, TELEGRAPHS AND DITCHES.

§ 7547. Injuries to railroads. Every person who maliciously, either: § 684, Pen. C.

1. Removes, displaces, injures or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house or other structure or fixture, on any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or any branch, branchway or turnout connected with any railroad,

Is punishable by imprisonment in the penitentiary not less than one and not exceeding four years, or in a county jail not less than six months.

§ 7548. When death results therefrom. Whenever any offense specified in the last section results in the death of any human being, the offender is punishable by imprisonment in the penitentiary for not less than four years. § 685, Pen. C.

§ 7549. Injuries to highways. Every person who maliciously digs up, removes, displaces, breaks or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of felony. § 686, Pen. C.

§ 687, Pen. C.
am'd.
§ 1, c. 92, 1865.

§ 7550. Obstructing highway. Barbed wire fence. Every person who shall knowingly and willfully obstruct or plow up, or cause to be obstructed or plowed up, any public highway or public street of any town, except by order of the road supervisors for the purpose of working the same, or injure any bridge on the public highway, or shall build or place a barbed wire fence across any well traveled trail, which has been the usual and common route of travel for not less than one year prior to the commission of the offense: without placing on the outside of the top tier of barb wire on said fence, a board, pole or other suitable protection, to be at least sixteen feet in length, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding one hundred dollars, and shall be liable for all damages to person or property by reason of the same.

§ 688, Pen. C.

§ 7551. Injury to tollhouse or gate. Every person who maliciously injures or destroys any tollhouse or turnpike gate is guilty of felony.

§ 689, Pen. C.

§ 7552. Injury to mileboards or guideposts. Every person who removes or injures any mileboard, milestone or guidepost, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

§ 690, Pen. C.

§ 7553. Injuring telegraph lines. Every person who maliciously takes down, removes, injures or obstructs any line of telegraph or any part thereof, or appurtenance or apparatus therewith connected, or severs any wire thereof, is guilty of a misdemeanor.

§ 1, c. 74, 1887.
am'd.

§ 7554. Unauthorized diversion of water from irrigation ditch. It shall be unlawful, for any person to divert any of the waters from any irrigation ditch, in this state, or to interfere in any manner whatever with any irrigation ditch, without first having obtained the permission of the owner of such ditch, or of the person or persons lawfully in charge thereof.

§ 2, c. 74, 1887.
am'd.

§ 7555. Punishment. Justice's jurisdiction. Every person violating any of the provisions of the preceding section, shall be deemed to be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than fifty, and any justice of the peace within the county where such offense may be committed shall have jurisdiction to try and determine all cases arising under the provisions of said section.

CHAPTER 62.

MALICIOUS MISCHIEF.

691, Pen. C.

§ 7556. Malicious mischief defined. Every person who maliciously injures, defaces or destroys any real or personal property not his own, in cases other than such as are specified in the following sections, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property or public officer having charge thereof.

§ 7557. **Following sections not restrictive.** The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the last section. § 692, Pen. C.

§ 7558. **Poisoning domestic animals.** Every person who willfully administers poison to any animal, the property of another, and every person who maliciously exposes any poisonous substance with intent that the same shall be taken by any such animal, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment. § 693, Pen. C.

§ 7559. **Killing, maiming or torturing animals.** Every person who maliciously kills, maims or wounds any animal, the property of another, or who maliciously and cruelly beats, tortures or injures any animal, whether belonging to himself or another; is guilty of a misdemeanor. § 694, Pen. C.

§ 7560. **Abusing domestic animals. Punishment.** Every person who shall willfully overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary food or water, or cruelly beat any animal, and any person who causes or procures an animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, or deprived of necessary food or water or cruelly beaten, and any person who shall work any animal or cause the same to be worked when unfit for work, and any person who shall unnecessarily expose any animal to heat or cold, or leave the same hitched and uncovered in cold weather or storm, or in the nighttime, is guilty of a misdemeanor. Any officer finding any animal maltreated, abused or unsheltered in any of the manners hereinbefore specified, shall cause the same to be released and properly cared for and the charges therefor shall be a lien upon such animal to be collected as in case of pledge. And it shall be the duty of all incorporated municipalities that are supplied with water in whole or in part by a system of waterworks, to provide suitable and a sufficient number of watering troughs wherein water for stock shall be kept at all times between May 1st and November 1st in each year. But nothing in this section contained shall be construed to mean herds of stock which do not properly belong in any such municipality; and if any person or persons shall knowingly water at any such watering trough any animal infected with any infectious disease, he shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, shall be fined not exceeding the sum of twenty-five dollars, or by imprisonment in the county jail not to exceed the term of fifteen days, or by both such fine and imprisonment. § 1, c. 48, 1845.

§ 7561. **Keeping houses or pits for fighting animals.** Every person who, either: § 2, c. 55, 1891.
am'd.

1. Keeps or maintains any house, pit or other place to be used in permitting any fight between birds, dogs or other animals; or,

2. Establishes, promotes or encourages any exhibition of the fighting of birds, dogs or other animals,

Is guilty of a misdemeanor.

§ 7562. **Instigating fights between animals.** Every person who maliciously, or for any bet, stake or reward, instigates, encourages or promotes any fight between animals, or instigates or § 696, Pen. C.

encourages any animal to attack, bite, wound or worry another, is guilty of a misdemeanor.

§ 3, c. 55, 1891.
am'd.

§ **7563. Officer's duty to arrest.** It is hereby made the duty of every sheriff, deputy sheriff, constable, marshal or police officer within this state upon request of any citizen thereof to arrest, without a warrant, any person found violating any of the provisions of the last section, and any such officer failing, neglecting or refusing to perform such duty, is guilty of a misdemeanor.

§ 698, Pen. C.
2, c. 111, 1885.
am'd.

§ **7564. Wounding or trapping birds in cemetery.** Every person who, within any public cemetery or burying ground, wounds or traps any birds or destroys any bird's nest, or removes any eggs or young birds from any nest; and every person who buys or sells or offers or keeps for sale, any bird which has been killed or trapped in violation of this section, is punishable by a fine of five dollars for each offense, recoverable in any justice's court within the county where the offense is committed.

§ 699, Pen. C.

§ **7565. Burning buildings, grain and hay.** Every person who willfully burns any building not the subject of arson, any stack of grain of any kind or of any hay, any growing or standing grain, grass, trees or fence, not the property of such person, is punishable by imprisonment in the penitentiary not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year.

§ 700, Pen. C.

§ **7566. Injuring house of worship.** Every person who willfully breaks, defaces or otherwise injures any house of worship, or any part thereof or any appurtenance thereto, or any book, furniture, ornament, musical instrument, article of silver or plated ware or other chattel kept therein for use in connection with religious worship, is guilty of felony.

§ 701, Pen. C.

§ **7567. Destroying building with explosive.** Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down or injures the whole or any part of any building, by means of which the life or safety of any human being is endangered, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three.

§ 702, Pen. C.

§ **7568. Endangering human life with explosive.** Every person who places in, upon, under, against or near to any building any gunpowder or other explosive substance, with intent to destroy, throw down or injure the whole or any part thereof, under circumstances that, if such intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of felony.

§ 703, Pen. C.
am'd.
§ 1, c. 42, 1879.

§ **7569. Malicious injury to freehold.** Every person who willfully commits any trespass by either:

1. Cutting down or destroying any kind of wood or timber, standing or growing upon the lands of another; or driving or riding through, into or across any cultivated hedge or tree row, or any grove of ornamental trees or orchard of fruit trees growing upon the land of another, or in any other manner injuring the same; or,

2. Carrying away any kind of wood or timber that has been cut down and is lying on such lands; or,

3. Maliciously severing from the freehold any produce thereof, or anything attached thereto; or,

4. Digging, taking or carrying away from any lot situated within the bounds of any incorporated city, without the license of the owner

or legal occupant thereof, any earth, soil or stone, being a part of the freehold or severed therefrom at some previous time, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property; or,

5. Digging, taking or carrying away from any land in any incorporated city or town of this state, laid down on the map or plan of said city or town as a street or avenue, or otherwise established or recognized as a street or avenue, without the license of the mayor and common council or other governing body of such city or town, or owner of the fee thereof, any earth, soil or stone, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property,

Is guilty of a misdemeanor.

§ 7570. Injuring timber and enumerated fixtures. Every § 704, Pen. C.
person who shall wantonly or maliciously cut, dig up or injure any timber set out, planted, cultivated or growing naturally, or who shall wantonly or maliciously open, let down, throw down or prostrate any fence, gate or bars, belonging to any inclosure of any description of cultivated and growing timber, or tears down or opens any such fence, gate or bars, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment, and shall be liable in damages to the party injured.

§ 7571. Injuring standing crops. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this code, or by some of the statutes which it specifies as continuing in force, is guilty of a misdemeanor. § 705, Pen. C.

§ 7572. Injuring fruit or melons in daytime. Every § 706, Pen. C.
person who maliciously or mischievously enters in the daytime, the inclosure, or goes upon the premises of another, with the intent to knock off, pick, destroy or carry away, or having lawfully entered or gone upon does afterward wrongfully knock off, pick, destroy or carry away any apples, peaches, pears, plums, grapes or other fruit, melons or flowers of any tree, shrub, bush or vine, shall be punished by a fine not exceeding one hundred dollars and not less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 7573. Same in nighttime. Every person who shall, maliciously or mischievously enter the inclosure, or go upon the premises of another in the nighttime, and knock off, pick, destroy or carry away, any apples, peaches, pears, plums, grapes or other fruit, melons or flowers, of any tree, shrub, bush or vine, or having entered the inclosure or gone upon the premises of another, in the nighttime, with the intent to knock off, pick, destroy or carry away any fruit or flowers, as aforesaid, be actually found thereon, shall, on conviction thereof, be punished by fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days. § 707, Pen. C.

§ 7574. Injuring fruit trees. Every person who shall, maliciously or mischievously, bruise, break or pull up, cut down, carry away, destroy or in anywise injure any fruit or ornamental tree, shrub, vine or material for hedge, being, growing or standing on the

land of another, shall be punished by a fine not exceeding one hundred and not less than ten dollars, or by imprisonment in the county jail not exceeding thirty days.

§ 709, Pen. C.

§ 7575. Removing landmarks. Every person who, either:

1. Maliciously removes any monuments of stone, wood or other material, erected for the purpose of designating any point in the boundary of any lot or tract of land; or,

2. Maliciously defaces or alters the marks upon any tree, post or other monument, made for the purpose of designating any point, course or line in any such boundary; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks,

Is guilty of a misdemeanor.

§ 710, Pen. C.

§ 7576. Interfering with piers or booms. Every person who, without authority of law, interferes with any pier, booms or dams, lawfully erected or maintained upon any waters within this state, or hoists any gate in or about said dams, is guilty of a misdemeanor.

§ 711, Pen. C.

§ 7577. Destroying dam. Every person who maliciously destroys any dam or structure erected to create hydraulic power, or any embankment necessary for the support thereof, or maliciously makes or causes to be made, any aperture in such dam or embankment, with intent to destroy the same, is guilty of a misdemeanor.

§ 712, Pen. C.

§ 7578. Removing or injuring piles. Every person who maliciously draws up or removes, or cuts or otherwise injures any piles fixed in the ground and used for securing any bank or dam of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, dock, quay, jetty or lock, is punishable by imprisonment in the penitentiary not exceeding five years and not less than two, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 713, Pen. C.

§ 7579. Removing buoy from Missouri river. Every person who willfully removes any buoy placed in the Missouri river by any lawful authority, is guilty of a misdemeanor.

§ 714, Pen. C.

§ 7580. Removing or making signal light. Every person who unlawfully masks, alters or removes any light or signal, or willfully exhibits any false light or signal, with intent to bring any locomotive or any railway car or train of cars into danger, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three years.

§ 715, Pen. C.

§ 7581. Injuring written instrument. Every person who maliciously mutilates, tears, defaces, obliterates or destroys any written instrument being the property of another, the false making of which would be forgery, is punishable in the same manner as the forgery of such instrument is made punishable.

§ 716, Pen. C.

§ 7582. Mutilating election returns. Every messenger appointed by authority of law to receive and carry any report, certificate or certified copy of any statement relating to the result of any election, who willfully mutilates, tears, defaces, obliterates or destroys the same, or does any other act which prevents the delivery of it as required by law, and every person who takes away from such messenger any such report, certificate or certified copy, with intent to prevent its delivery, or who willfully does any injury or other act such as is

above specified, is punishable by imprisonment in the penitentiary not exceeding five years and not less than two years.

§ 7583. **Opening and reading sealed letter.** Every person § 717, Pen. C.
who willfully opens and reads or causes to be read, any sealed letter,
not addressed to himself, without being authorized so to do, either by
the writer of such letter, or by the person to whom it is addressed,
and every person who without like authority publishes any letter,
knowing it to have been opened in violation of this section, or any
part thereof, is guilty of a misdemeanor.

§ 7584. **Disclosing telegraphic dispatch.** Every person who § 718, Pen. C.
discloses the contents of any telegraphic dispatch or any part thereof,
addressed to another person, without the permission of such person,
except upon the lawful order of a court or the judge thereof, to his
loss, injury or disgrace, is guilty of a misdemeanor. ^{am'd.} § 1, c. 109, 1883.

§ 7585. **Secreting telegraphic dispatch.** Every person who § 719, Pen. C.
having in his possession any telegraphic dispatch addressed to another,
maliciously secretes, conceals or suppresses the same, is guilty of a
misdemeanor.

§ 7586. **Injuring works of art or improvement.** Every § 720, Pen. C.
person who willfully injures, disfigures or destroys, not being the
owner thereof, any monument, work of art or useful or ornamental
improvement, within the limits of any village, town or city, or any
shade tree or ornamental plant, growing therein, whether situated
upon private ground, or on any street, sidewalk or public park or
place, is guilty of a misdemeanor.

§ 7587. **Destroying works of literature or art.** Every per- § 721, Pen. C.
son who maliciously cuts, tears, disfigures, soils, obliterates, breaks
or destroys any book, map, chart, picture, engraving, statue, coin,
model, apparatus, specimen or other work of literature or art, or
object of curiosity deposited in any public library, gallery, museum,
collection, fair or exhibition, is punishable by imprisonment in the
penitentiary not less than one and not exceeding three years, or in a
county jail not exceeding one year.

§ 7588. **Breaking gas or water pipe.** Every person who § 722, Pen. C.
willfully breaks, digs up or obstructs, any pipe or main for conduct-
ing gas or water, any works erected for supplying buildings with gas
or water, or any appurtenances or appendages therewith connected, is
punishable by imprisonment in the penitentiary not less than one and
not exceeding three years, or in a county jail not exceeding one year.

§ 7589. **Destruction of farm buildings. Felony.** Any per- § 1, c. 62, 1895.
son who shall enter upon any farm lands situated in this state and not
situated within the limits of any incorporated city, town or village,
the land being the property of another, and shall tear down and
remove from any unoccupied buildings standing on such premises
any door, window, siding, shingles, ceiling, floor, sheathing, finish,
rafters or scantling, or tear down any chimney, and shall burn such
material on the premises or shall remove and take away any such
materials from such premises, whether he uses or destroys the same,
shall be deemed guilty of malicious trespass; and should the materials
that have been taken away reduce the value of the buildings standing
on said premises in the sum of more than twenty dollars, without
regard to the value of the materials taken away, such person shall be
deemed guilty of a felony, otherwise, of a misdemeanor.

§ 7590. **Misdemeanor, felony, how punished.** Every per- § 2, c. 62, 1895.
son violating any of the provisions of the last section shall be pun-

ishable, upon conviction of the misdemeanor, by a fine not exceeding one hundred dollars; and upon conviction of the felony, by imprisonment in the penitentiary not exceeding three years.

§ 3, c. 62, 1895.

§ 7591. Conjointly committed. Punishment. Whenever two or more persons conjointly commit any such malicious trespass, the aggregate value of the materials taken away and removed by each shall be considered in determining the amount in which any such property may have been damaged, and each person shall be considered as having committed such malicious trespass to the extent of the aggregate damage done by all.

§ 4, c. 62, 1895.

§ 7592. How value determined. Whenever one or more persons have committed any acts of malicious trespass, as provided in section 7589, and shall have entered upon the real estate several times and carried away such materials a little at a time, in determining the value that such improvements have been damaged, all the material carried away by any such person being tried, shall be taken into consideration, providing it shall have been taken, carried away and destroyed within one year from the date of his arrest under this chapter.

CHAPTER 63.

PROHIBITION, UNLAWFUL DEALING IN INTOXICATING LIQUORS.

§ 1, c. 110, 1890.

§ 7593. Penalty for manufacturing or sale. Who may sell. Any person, association or corporation, who shall, within this state, directly or indirectly manufacture any spirituous, malt, vinous, fermented or other intoxicating liquor, or shall import any of the same for sale or gift as a beverage, or shall keep for sale, or sell or offer for sale or gift, barter or trade, any of such intoxicating liquors as a beverage, shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than two hundred, nor more than one thousand dollars, and be imprisoned in the county jail not less than ninety days nor more than one year; and for the second and every successive offense, shall be deemed guilty of a felony, and be punished by imprisonment in the penitentiary not exceeding two years and not less than one year; provided, that registered pharmacists under the laws of this state may sell intoxicating liquors for medicinal, mechanical, scientific, and wine for sacramental purposes, as hereinafter provided.

§ 2, c. 110, 1890.

am'd.
§ 1, c. 72, 1895.

§ 7594. Druggist's permit, how obtained. Application to be published. Bond and approval. Appeal. It shall be unlawful for any person or persons to sell or barter, for medicinal, scientific or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having procured a druggist's permit therefor from the county judge of the county wherein such druggist may be doing business at the time; and such county judge is hereby authorized in his discretion to grant a druggist permit for the period of one year, to any person of good

moral character who is a registered pharmacist under the laws of this state, and lawfully and in good faith engaged in the business of a druggist in his county, and who in his judgment can be entrusted with the responsibility of selling such liquors for the purposes aforesaid in the manner hereinafter provided. In order to obtain a druggist permit under this act, the applicant shall file in the office of the county judge of the county wherein he is doing business, not less than thirty days prior to the hearing thereof, a petition signed by the applicant and twenty-five reputable freeholders, having the qualifications of electors of the town, village, township or ward of any city, and twenty-five reputable women over twenty-one years of age, who are residents of the town, village, township or city wherein such business is located; provided, however, that when the number of freeholders having the qualifications of electors residing within the town, village, township or ward shall not exceed forty, and when the number of reputable women over twenty-one years of age, who are residents of the town, village, township or city, shall not exceed forty, then the petition of the applicant signed by seventy per cent of such number of qualified men and women as reside within the town, village, township or ward, shall entitle the applicant to the permit. All petitions shall set forth:

1. The town, village, city or township, and particular place therein wherein such business is located, and that the applicant is a person of good moral character, and does not use intoxicating liquors as a beverage, and can be entrusted with the responsibility of selling the same.

2. That said applicant is a pharmacist as aforesaid, and is lawfully and in good faith engaged personally in the business of a druggist, as the proprietor thereof, at the place designated in the petition, and well versed in the profession.

3. That said applicant has, in his said business, exclusive of intoxicating liquors and fixtures, a stock of drugs, if in any city, of the value of at least one thousand dollars, and if elsewhere, of the value of at least five hundred dollars.

Before any such petition shall be heard, or any permit issued to such applicant, he shall publish for at least thirty days next prior thereto, a notice in some newspaper in the town, village, township or city where such business is located, or if none is published therein, then in some paper of general circulation in the county, stating the time and place set by said judge for the hearing of such petition. The applicant shall be required to prove the truthfulness of each and every statement contained in such petition, and the state's attorney of such county shall, and any other citizen of the county may appear and cross-examine the witnesses of the applicant, and may introduce evidence in rebuttal of the evidence offered by the applicant. If satisfied that the signatures of such petition were signed by such persons, and that such petitioners are freeholders or citizens of such town, village, township, city or ward as above expressed, and that the statements in such petition are true, the county judge may in his discretion grant a permit to the applicant to sell intoxicating liquors for medicinal, mechanical and scientific purposes only; and such permit shall be recorded upon the journal of the county court, and a certified copy thereof shall be posted in a conspicuous place in the store wherein said business is carried on before it shall be of any validity. Before such permit shall be of any validity, such

druggist shall file with the county judge, to be approved by him, a good and sufficient bond to the state of North Dakota, in the sum of one thousand dollars, conditioned that such applicant and any one in his employ will neither use, sell, barter or give away any intoxicating liquors in violation of law, and on violation of the provisions of said bond the same shall thereby become forfeited; and the conviction of said pharmacist or any one in his employ shall be deemed prima facie evidence of such violation.

Any applicant or any citizen feeling himself aggrieved by the decisions of the county judge may, within ten days thereafter, upon filing a bond, made payable to the state of North Dakota, in the sum of fifty dollars, to be approved by the county judge, conditioned that he will prosecute the same to a speedy determination, and pay the costs occasioned by such appeal if the order of the county judge shall be sustained, prosecute the cause upon appeal to the district court. The procedure in any case taken on appeal to the district court from the order of the county judge shall be as prescribed by article 9 of chapter 3 of the probate code, so far as applicable, and a statement of the case with exceptions may be made, signed and certified by the county judge. If the district court shall find that the county judge has abused his discretion, it shall have power to cause the county judge to comply with its judgment, otherwise the order of the county judge shall be by the district court affirmed. No appeal shall be allowed from the order of the district court. If the order of the county judge shall be reversed, the costs shall be paid by the county. If at any time there shall be filed with the county judge a petition stating that any druggist, naming him, who has a permit to sell intoxicating liquors, is not in good faith conforming to the provisions of this chapter, verified by the affidavit of at least one of the petitioners hereinafter named, and signed by twenty-five reputable men and twenty-five reputable women, all of whom reside in the town, village, township, city or ward in which the business of said druggist is carried on, requesting that the permit of such druggist be canceled, the county judge shall immediately issue an order citing such druggist to appear before him on a day named, not more than ten days from the issuing of such order, at which time the question of cancellation of such permit shall be considered. Such examination shall be conducted in the same manner in all respects as herein provided for the hearing of the original petition for granting such permit, and such county judge shall, if there are reasonable grounds for believing such druggist is not in good faith carrying out all the provisions of this chapter, cancel such permit. An appeal may be had from the decision of such county judge to the district court as herein provided for appeals from the application for a permit; provided, the permit of such druggist shall be inoperative till such appeal is finally decided. If any county judge shall issue a permit to any person not registered as a pharmacist, or shall knowingly grant the same to a person in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist as a proprietor thereof, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars; and if any person shall sign a petition, as provided herein, of any applicant known by such person to be in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist, he shall be deemed guilty of a misdemeanor, and upon conviction

tion shall be punished by a fine of not less than fifty nor more than one hundred dollars. Before the petition of a druggist for a permit to sell intoxicating liquors shall be heard by the county judge the applicant shall pay a fee of five dollars to the county judge, who shall pay the same into the county treasury on or before the first day of the following month for the benefit of the general revenue fund.

§ 7595. Physician may prescribe, under what conditions. § 3, c. 110, 1890.

Any physician who is lawfully and regularly engaged in the practice of his profession as a business, and who, in case of actual need, shall deem any intoxicating liquors necessary for the health of his patients, may give such patient a written or printed prescription therefor, stating in said prescription the particular disease for which it is given, or may administer the same himself; but no such prescription shall be given or liquors administered, except in cases of actual need, and when, in his judgment, the use of intoxicating liquors is necessary. And every physician who shall give such prescription or administer such liquors in violation of this chapter, and every physician who shall give to or write for any person a prescription for intoxicating liquors for the purpose of enabling or assisting any person to evade any of the provisions of this chapter, or for the purpose of enabling or assisting any person to obtain any intoxicating liquors for use as a beverage, or to be sold or disposed of in any manner, in violation of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than three hundred, nor more than eight hundred dollars, and by imprisonment in the county jail not less than thirty days nor more than six months.

§ 7596. Druggist sale regulated. Affidavits. Oaths. § 4, c. 110, 1890.

Blanks furnished. Sales recorded. Penalty. Any druggist having a permit to sell intoxicating liquors under the provisions of this chapter, may sell the same only by himself in person, or by a clerk who is a registered pharmacist or assistant pharmacist under the laws of this state, for medical purposes only, upon the printed or written affidavit of the applicant, setting forth the particular medical purposes for which such liquor is required, the kind and quantity desired; that it is necessary and actually needed for the particular purpose, by the patient to be named; and that it is not intended for a beverage, nor to sell or give away; that the applicant is over twenty-one years of age; which affidavits shall be in the following form and subscribed by the applicant in ink:

No..... Date,.....
State of North Dakota, }
County of } ss.

I, the undersigned, do solemnly swear that my real name is; that I reside at..... county, state of.....; that..... is necessary and actually needed by..... to be used as a medicine for the disease of.....; that it is not intended as a beverage, nor to sell nor to give away, and that I am over twenty-one years of age. I therefore make application to....., druggist, for said liquor.

.....Applicant.
Subscribed in my presence and sworn to before me this..... day of..... 18....
.....Pharmacist.

And such druggist may sell intoxicating liquors for mechanical, scientific and wine for sacramental purposes only upon the written or printed affidavit of the applicant, setting forth the particular purpose for which such liquor is required, the kind and quantity desired, that it is not intended to be used as a beverage, nor to sell nor to give away, and that it is intended only for his own use, and that the applicant is over twenty-one years of age. Such affidavit shall be in the following form, and subscribed by the applicant in ink:

No. Date.....
 State of North Dakota, }
 County of..... } ss.
 I, the undersigned, do solemnly swear that my real name is; that I reside at county, state of; that of is required by myself to be used for purposes, to be used for; that it is not intended for a beverage, nor to sell nor to give away, and that I am over twenty-one years of age. I therefore make application to druggist, for said liquor.

....., Applicant.
 Subscribed in my presence and sworn to before me this..... day of....., 18...
, Pharmacist.

And there shall be but one sale and one delivery on any one affidavit, but no druggist shall permit the drinking on his premises, nor in any apartment connected therewith and under his control, any of the intoxicating liquors purchased by affidavit or otherwise: provided, such druggist shall be permitted to sell any of the liquors mentioned herein, in quantities not less than one gallon, to any other druggist within the state holding a permit as provided in this chapter. The affidavits provided for in this section shall be made before the pharmacist or assistant pharmacist making sale of such liquors upon proper printed blanks, which it is hereby made the duty of the county auditor of the county in which such sales are made to furnish to such druggist at a cost equal to the actual and necessary outlay made therefor by him. Such blanks shall be in series of 100 each, numbered from 1 to 100 consecutively, and bound in book form, each series being of uniform style throughout, except that no two blanks of the same series shall be of the same number. It shall be the duty of the county auditor to indorse each such book with the date of delivery and to whom made, to sign such indorsement and attest to the same with his official seal, and to keep two exact printed copies, except as to numbers, of the blanks of each series, one of which shall be filed in his office and one in the office of the county judge: he shall also keep a record of the series, and of the number of each series, of such blanks furnished to each druggist, and shall, within ten days after the same are delivered to such druggist, file a copy thereof, together with a copy of the blank affidavits, in the office of the county judge of his county. For such services the county auditor shall be entitled to a fee of twenty-five cents for each series of blanks so furnished to be paid by the druggist obtaining such blanks.

All pharmacists and assistant pharmacists are hereby empowered to administer oaths for the purposes of this chapter, and no such affidavit shall be received by any pharmacist or assistant pharmacist until

it shows on its face that it has been properly subscribed and sworn to by the applicant. The affidavits provided for in this section shall be retained by the druggist in the original book form, and on or before the first day of each month shall, together with the affidavit of such druggist that the liquors therein mentioned are all the intoxicating liquors sold by him during the month, except the liquors sold to other druggists, be filed in the office of the county judge who issued his permit, where they shall be safely kept for the period of two years from the date of filing. Before said affidavits shall be received or filed by said county judge, he shall make strict examination of the copies of affidavits and record of numbers thereof furnished him by the county auditor, and ascertain whether such druggist has returned all affidavits furnished him in blank by the county auditor; and if any such affidavit or blank is missing, said county judge shall require such druggist to file instead thereof his affidavit showing as near as he can what has become of such affidavit or blank. And any person having a permit to sell intoxicating liquors under the provisions of this chapter, shall each month, at the time he files the affidavit herein provided for, also file with the county judge an affidavit setting forth the amounts and kinds of liquors, as nearly as can be done, which such person or firm of which he is a member has on hand on the day such affidavit is made, as well as the amounts and kinds of liquors he has purchased or procured during the preceding month and the name or names of the persons, companies or corporations and their place of doing business, from whom, and the dates on which such liquors were purchased or procured.

For each series of affidavits filed under the provisions of this chapter, the county judge shall collect one dollar and fifty cents from the druggist filing the same, or the proportionate part thereof for the number filed, which shall be paid by him on the first day of each month into the county treasury for the benefit of the general county fund. The county judge shall receive no fees for his services under this chapter, except a salary of fifteen dollars per annum for each one thousand inhabitants in such county, the number to be determined by the last census return of such county, but in no case shall such salary exceed in the aggregate the sum of one thousand dollars per annum, to be paid by the county commissioners as other salaries. Every person, whose affidavit so made for the purpose of obtaining intoxicating liquors shall be false in any material matter, shall be deemed guilty of perjury, and is punishable by imprisonment in the penitentiary not less than one and not exceeding two years, or in the county jail not less than six months.

Any person who shall subscribe any name or character other than his own name to any affidavit for the purpose of obtaining intoxicating liquors as provided herein, shall be deemed guilty of forgery in the fourth degree, and punished therefor by imprisonment in the penitentiary not exceeding two years and not less than one year. Any person who shall sell or furnish any intoxicating liquors so obtained by him upon affidavit or certificate, to others as a beverage, or shall use the same as a beverage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than thirty nor more than ninety days. Every such druggist shall keep a book wherein shall be recorded, daily, all sales of intoxicating liquors made by him or

his employees, showing the name and residence of the purchaser, the kind and quantity of the liquors sold, the purpose for which it was sold, and the date of the sale. Such record and affidavit shall be open for the inspection of the public at all reasonable times during business hours, and any person so desiring may take memoranda or copies thereof.

§ 5, c. 110, 1890.

§ 7597. False affidavit. Other violations. Penalties. Any druggist or pharmacist, or assistant pharmacist in his employ, who shall fail or neglect to make and keep a record as herein provided of any intoxicating liquors by him sold before the same are delivered, or shall refuse any person an examination of such records or the taking of memoranda or copy therefrom at any time during business hours; or who shall sell, barter or give away any such liquors at any place not designated in his permit, or upon any affidavit other than those herein provided; or shall make any false affidavit as to any sales made by him or his employees, or shall fail to sign the certificate to the signature of any applicant for such liquor prior to the delivery thereof, or shall sign any false certificate to any such affidavit, or shall mutilate or remove any affidavits from the book to him issued as aforesaid; or shall fail to return the same as hereinbefore provided; or shall sell any intoxicating liquor to any person whom he has reason to believe desires the same to use as a beverage, or sell liquor when he has reason to believe the liquor sold is not a remedy for the ailment described in the affidavit therefor; or shall sell, barter or give away any intoxicating liquors to any minor, any person under the influence of liquor or who is in the habit of becoming intoxicated, or who shall allow such liquor sold as a medicine or otherwise, to be drunk on his premises, or premises under his control; or in any other manner omit any act required of him herein, or violate any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred nor more than one thousand dollars, and be imprisoned in the county jail not less than ninety days nor more than one year, and shall forfeit his permit issued under the provisions of this chapter, and his right to obtain a permit within five years next thereafter; and in all cases when forfeitures are provided under the provisions of this chapter, the court shall declare the same on rendering judgment in the action.

§ 6, c. 110, 1890.

am'd.

§ 1, c. 74, 1895.

§ 7598. Intoxicating liquors defined. All spirituous, malt, vinous, fermented, or other intoxicating liquors or mixtures thereof, by whatever name called, that will produce intoxication, or any liquors or liquids which are made, sold or offered for sale as a beverage and which shall contain *coccus indicus*, copperas, opium, cayenne pepper, picric acid, Indian hemp, strychnine, tobacco, darnal seed, extract of logwood, salts of zinc, copper or lead, alum or any of its compounds, methyl alcohol or its derivations, amyl alcohol or any extract or compound of any of the above ingredients, shall be considered and held to be intoxicating liquors within the meaning of this chapter; provided, that fermented and alcoholic liquors and mixtures thereof shall not be deemed intoxicating if they contain less than two per cent of alcohol by volume.

§ 7, c. 110, 1890.

am'd.

§ 1, c. 74, 1895.

§ 7599. Life of permit to sell liquors. A permit to sell intoxicating liquor under this chapter shall continue in force until the same is revoked for cause, unless sooner forfeited under the provisions of this chapter; provided, however, that if at any time the number of freeholders and reputable women who signed the petition of the

applicant shall fall below the number required by law by removal from the state, county, city or town, or by death, or at the end of any year, by withdrawal of their names from the petition, then the life of said permit shall expire, unless a new petition containing a sufficient number of qualified freeholders and reputable women to bring the entire number up to the requirements of an original petition as provided in section 7594 of this chapter, shall be within three days from the time of such withdrawals, filed anew in the office of the county judge; provided, further, however, that within fifteen days prior to the expiration of each year during the life of the permit, the applicant must obtain from the county judge and post with said permit a certificate stating that the application upon which said permit was issued continues to possess the requisite attributes of an original application.

§ 7600. Duty of all peace officers to apprehend and notify. § 8, c. 110, 1890.

It shall be the duty of every sheriff, deputy sheriff, constable, mayor, marshal, police judge and police officer of any city or town having notice or knowledge of any violations of the provisions of this chapter, to notify the state's attorney of the fact of such violation and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section, he shall upon conviction be fined in any sum not less than one hundred nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person; and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. For a failure or neglect of official duty in the enforcement of this chapter, any of the city or county officers herein referred to may be removed by civil action.

§ 7601. Duty of state's attorney. Seizure and arrests. § 9, c. 110, 1890.

Authority of justices of the peace. If the state's attorney of any county shall be notified by any officer or other person or be cognizant himself of any violation of any of the provisions of this chapter, it shall be his duty forthwith diligently to inquire into the facts of such violation and for such purpose he is hereby authorized and required to issue his subpoena for such person or persons as he may have reason to believe have any information or knowledge of such violation, to appear before him at a time and place designated in such subpoena, then and there to testify concerning any violation of this chapter; said subpoena shall be directed to the sheriff or any constable of the county, and shall be served and returned to such state's attorney in the same manner as subpoenas are served and returned in criminal cases. Each witness shall be sworn by the state's attorney to testify the truth, the whole truth and nothing but the truth, and true answer make to all questions which may be propounded to him by such state's attorney touching any violation of the provisions of this chapter. The testimony of every such witness shall be reduced to writing and signed by such witness, as in the taking of depositions in civil cases. For all purposes in this section the state's attorney is hereby authorized and empowered to administer oaths or affirmation to all witnesses, and shall have power to punish any witness for contempt for or on account of any disobedience of a subpoena, a refusal to be sworn or answer as a witness, or to sign his testimony, and may compel the attendance of witnesses by attachment in the same manner and with like effect as provided in the code of civil procedure.

If the testimony so taken shall disclose the fact that an offense has been committed against any of the provisions of this chapter, the state's attorney shall forthwith file such statement, together with his information against the person having committed the offense, in some court of competent jurisdiction, and such statement or testimony, together with the information of such state's attorney when verified by him on information and belief, shall have the same effect as if such information had been verified positively. And thereupon a warrant shall issue for the arrest of the person or persons named in such information, as in other criminal actions, and in addition thereto, shall command the officer to whom it may be directed to seize and take into his custody any and all intoxicating liquors, vessels and bottles containing the same, which he may find in such person's possession, and safely keep the same, subject to the order of the court; provided, the sworn statement of the witness or witnesses, as hereinbefore provided, and the information filed by the state's attorney shall particularly describe the property to be seized and the place where kept; and if upon the trial of such person he shall be convicted of the violation of any of the provisions of this chapter, the court shall order as a part of the judgment, in addition to the penalty herein provided, that the officer having the custody thereof shall publicly destroy all such property used and employed for such illegal purpose: provided, the court shall find and adjudge the property so seized was being used and employed by the defendant for such illegal purposes; provided, further, that when the state's attorney has been notified in writing under oath, giving the name of the person violating the law, the place where the unlawful business is carried on and the names of the witness or witnesses by whom the affiant believes that the facts can be proven, and the state's attorney shall fail, neglect or refuse to make an investigation, then the affiant may make affidavit before some justice of the peace of the township, city or county wherein the crime has been committed, giving the name of the violator of the law, the location of the place and the names of the witnesses by whom he believes the offense can be proved, and it shall be the duty of such justice of the peace, and he is hereby empowered with authority to issue his subpoena for the witnesses named or any other witnesses whose names shall be made known by the first witnesses subpoenaed. Such subpoena shall be directed to any sheriff or constable of the county, or marshal or policeman of any city or town in the county, for service and return according to law. Such justice of the peace shall have power to fine for contempt and may compel the attendance of witnesses by attachment, and shall have all the powers for securing and taking the testimony of witnesses heretofore in this section given to the state's attorney. When the evidence is taken by the justice of the peace and reduced to writing, if it should show that a crime has been committed, it shall be certified to the state's attorney by the justice of the peace taking the same, and it shall be the duty of the state's attorney on the receipt of such evidence to file forthwith his information in the same manner as if the evidence had been taken by himself.

§ 10, c. 110, 1890.

§ 7602. Information to be filed. Trial. Penalty if found guilty. If the statement of any witness so taken before the state's attorney or a justice of the peace, as in the last section provided, shall disclose the fact that intoxicating liquors are being kept for unlawful sale or purpose, or are being sold by an unknown person or persons,

particularly describing such unknown person or persons, contrary to the provisions of this chapter, at any place, particularly describing the place to be searched and the property to be seized, as hereinafter provided, within such county, it shall be the duty of such state's attorney to file forthwith his information, together with such statements, with some magistrate of the county having jurisdiction, against such place and the unknown keepers thereof, which information, when verified by such state's attorney upon information and belief, together with such statements as aforesaid, shall have the same effect as if such information had been sworn to positively; and thereupon a warrant shall issue, directed to the proper officer, commanding him to search the premises described in the information and to seize all intoxicating liquors and all vessels and bottles containing the same, and arrest the keeper or keepers thereof, and said person or persons so arrested shall be examined and tried in the manner prescribed by law for the examination and trial of persons charged with an indictable offense, and if upon trial are found guilty shall be fined for the first offense not less than two hundred nor more than one thousand dollars, and be imprisoned in the county jail not less than ninety days nor more than one year; and for the second and every successive offense be punished by imprisonment in the penitentiary not exceeding two years, and not less than one, and the court before whom such conviction may be had shall also order all the property seized by the officer as aforesaid to be publicly destroyed; provided, said court shall also find and adjudge such property was being used by the defendant at the time of such search and seizure for the purpose of unlawfully selling or bartering intoxicating liquors.

§ 7603. Fees, how paid. Officers shall receive the same fees § 11, c. 110, 1890. and mileage for serving subpoenas issued by the state's attorney and justices of the peace under the provisions of this chapter as provided in criminal cases, and witnesses shall receive the same fees for attendance as provided for witnesses in cases before justices of the peace. Such fees shall be certified to the board of county commissioners by the state's attorney or justice of the peace, and paid by the county as witness fees for attendance before a grand jury. All witnesses shall attend upon the state's attorney or justice of the peace in pursuance to his subpoena, without the payment of any fees in advance. For every conviction under this chapter there shall be allowed an attorney's fee of ten dollars upon each count upon which the defendant shall be convicted, and the same shall be taxed as costs in the case, to be paid into the county treasury as hereinafter provided. If any prosecution begun by the state's attorney, the attorney general or his assistants, or by a citizen with the written consent or approval of the state's attorney or attorney general, under the provisions of this chapter, shall fail, the costs of such prosecution, unless otherwise specified herein, shall be paid by the county in which such prosecution or action was begun.

§ 7604. State's attorney to prosecute. Fines a special fund. Attorney general may prosecute. § 12, c. 110, 1890.
am'd. It shall be the duty of the state's attorneys diligently to prosecute any and all persons violating any of the provisions of this chapter, in their respective counties, and to bring suit upon all bonds or undertakings forfeited, immediately after the happening of such forfeitures, to recover the penalty, and to pay all money so collected, as herein provided, into the treasury of said county, and take the receipt of the treasurer

therefor; it shall be the duty of said treasurer to credit said money temporarily, to a special fund, to be designated as the liquor prosecution fund, to be disposed of as hereinafter provided. Said state's attorney is hereby empowered to draw his warrants, in each case separately, upon such fund to pay the expenses actually and necessarily incurred by him in securing testimony for and enforcing the provisions of this chapter; provided, however, that no treasurer shall pay any of said warrants so drawn by the state's attorney as aforesaid, until he files with such treasurer an itemized statement of such expenses in each and every case, duly verified by himself to the effect that the same were actually and necessarily incurred to promote the ends above expressed, and that the same have not been paid. Said treasurer shall by proper entries upon his books, specifically designate the action in which such money is received and paid out, and any net balance remaining in each action, after the payment of the necessary expenses incurred in said action, shall be by such treasurer passed to the credit of the school fund as provided by law. If any state's attorney shall fail, neglect or refuse to perform faithfully any duty imposed upon him by this chapter, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars and be imprisoned in the county jail not less than thirty nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office in addition to the fine imposed as herein provided. And whenever the state's attorney shall be unable, or shall neglect or refuse to enforce the provisions of this chapter in his county, or for any reason whatever the provisions of this chapter shall not be enforced in any county, it shall be the duty of the attorney general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify or file all such complaints, informations, petitions and papers as the state's attorney is authorized to sign, verify or file, and to do and to perform any act that the state's attorney might lawfully do or perform; and for such services he or his assistant shall receive a fee of ten dollars upon each count upon which the defendant shall be convicted, to be taxed and collected in the same manner, except that in all cases when there shall be a conviction, and the attorney's fees as provided for in this chapter shall not be paid by the defendant within one month after his release from jail, the county where such conviction is had shall then become liable to the attorney general or his assistant prosecuting such case for a fee of ten dollars upon each count upon which the defendant shall have been convicted.

§ 13, c. 110, 1890,
am'd.

§ 7605. Place of sales a nuisance. To be abated. Liquors destroyed. Presumptions. Process. Procedure. Penalties. All places where intoxicating liquors are sold, bartered or given away, in violation of any of the provisions of this chapter, or where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage, or where intoxicating liquors are kept for sale, barter or delivery in violation of this chapter, are hereby declared to be common nuisances; and if the existence of such nuisance is established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such place to be a nuisance, the sheriff, his deputy or undersheriff or any con-

stable of the proper county or marshal of any city where the same is located, shall be directed to shut up and abate such place, by taking possession thereof, if he has not already done so under the provisions of this chapter, and by taking possession of all such intoxicating liquors found therein together with all signs, screens, bars, bottles, glasses and other property used in keeping and maintaining such nuisance, and such personal property so taken possession of shall, after judgment, be forthwith publicly destroyed by such officer, and the owner or keeper thereof shall, upon conviction be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than two hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense be punished by imprisonment in the penitentiary not exceeding two years and not less than one; and said officer abating such nuisance shall securely close said building, erection or place where such nuisance was located, as against the use or occupation of the same for saloon purposes, and keep the same securely closed for the period of one year (unless sooner released as hereinafter provided), and any person breaking open said building, erection or place or using the premises so ordered to be closed, shall be punished for contempt, as hereinafter provided, in case of violation of injunctions; provided, however, that when leasehold premises are adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof, in writing, to the tenant, and when this is done the premises shall be turned over to the owner upon the order of the court or judge. But the release of the property shall be upon condition that the nuisance shall not be continued, and the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within the period of one year thereafter, the court, or in vacation the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property, and if the proceeding is an action in equity and bond is given and costs therein paid before judgment and order of abatement, the action shall be thereby abated; provided, however, that the release of the property under the provisions of this section shall not release it from any judgment, lien or penalty or liability to which it may be subject under any other statute or law.

The attorney general, his assistant, state's attorney, or any citizen of the county where such nuisance exists or is kept or is maintained, may maintain an action in the name of the state to abate and perpetually enjoin the same. The injunction shall be granted at the commencement of the action in the usual manner of granting injunctions, except that the affidavit or complaint or both, may be made by the state's attorney, attorney general or his assistant upon information and belief; and no bond shall be required; and if an affidavit shall be presented to the court or judge, stating or showing that intoxicating liquor, particularly describing the same, is kept for sale, or is sold, bartered or given away on the premises, particularly describing the

same, where said nuisance is located contrary to law, the court or judge must at the time of granting the injunction issue his warrant commanding the officer serving said writ of injunction, at the time of such service to search diligently the premises and carefully invoice all the articles found therein, used in or about the carrying on of the unlawful business, for which search and invoicing said officer shall receive the sum of ten dollars in addition to the fees now allowed by law for serving an injunction. If such officer upon such search shall find upon such premises any intoxicating liquor or liquors of any kind, he shall take the same into his custody and securely hold the same to abide the final judgment in the action (the expenses for such holding to be taxed as part of the costs in the action); and such officer shall also take and hold possession of all personal property found on such premises, and shall take and hold possession of such premises and keep the same closed until such final judgment.

The finding of such intoxicating liquor or liquors on such premises shall be *prima facie* evidence of the existence of the nuisance complained of. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt, for the first offense by a fine of not less than two hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense of contempt by imprisonment in the penitentiary not exceeding two years and not less than one in the discretion of the court or judge thereof. In case judgment is rendered in favor of the plaintiff in any action, brought under the provisions of this section, the court or judge rendering the same shall also render judgment for a reasonable attorney's fee in such action in favor of the plaintiff and against the defendants therein; which attorney's fee shall be taxed and collected as other costs therein, and when collected paid to the attorney or attorneys of the plaintiff therein; provided, if such attorney is the state's attorney such attorney's fee shall be paid into the county treasury as in section 7603 provided. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this chapter the court, or in vacation the judge thereof, shall have the power to try summarily and punish the party or parties guilty as required by law. Process shall run in the name of the state of North Dakota. The affidavits upon which the attachment for contempt issues shall make a *prima facie* case for the state.

The accused may plead in the same manner as to an information or indictment, in so far as the same is applicable. Evidence may be oral or in the form of affidavits, or both; the defendant may be required to make answer to interrogatories, either written or oral, as in the discretion of the court or judge may seem proper; the defendant shall not necessarily be discharged upon his denial of the facts stated in the moving papers; the clerk of the court shall upon the application of either party, issue subpoenas for witnesses, and except as above set forth, the practice in such contempt proceedings shall conform as nearly as may be to that adopted by the ninetieth rule of the supreme court of the United States for proceedings in equity in the circuit courts.

§ 14, c. 110, 1890.

§ 7606. Liability for causing intoxication. Every person who shall by the sale, barter or gift of intoxicating liquors cause the intoxication of any other person or persons shall be liable for and

compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and five dollars a day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, to be recovered by civil action in any court having jurisdiction.

§ 7607. Right of action. Injured party. Every wife, child, parent, guardian or employer or other person who shall be injured in person or property or means of support, by any intoxicated person, or in consequence of intoxication, habitual or otherwise, of any person, such wife, child, parent or guardian or employer shall have a right of action, in his or her own name, against any person who shall by selling, bartering or giving away intoxicating liquors, have caused the intoxication of such person, for all damages actually sustained as well as for exemplary damages; and a married woman shall have the right to bring suits, prosecute and control the same and the amount recovered, the same as if unmarried; and all damages recovered by a minor under this act shall be paid either to such minor, or his or her parent, guardian or next friend, as the court shall direct; and all suits for damages under this chapter shall be by civil action in any of the courts of this state having jurisdiction thereof. § 15, c. 110, 1890.

§ 7608. Clubhouse prohibited. Penalty. Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist or abet, in keeping or maintaining any clubroom or other place in which any intoxicating liquor is received or kept for the purpose of use, gift, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever; and every person who shall use, barter, sell or give away or assist or abet another in bartering, selling or giving away, any intoxicating liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be punished by a fine of not less than three hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than ninety days nor more than one year, and for every successive offense be punished by imprisonment in the penitentiary not to exceed two years and not less than one. § 16, c. 110, 1890.

§ 7609. Evasions deemed unlawful. The giving away of intoxicating liquor or any shifts or device to evade the provisions of this chapter, shall be deemed an unlawful selling within the provisions of this chapter. § 17, c. 110, 1890.

§ 7610. Fines and costs constitute liens. Proviso. All fines and costs assessed against any person or persons for any violation of this chapter, shall be a lien upon the real estate of such person or persons until paid; and in case any person or persons shall let or lease any building or premises or shall permit the same to be used and occupied for the sale of intoxicating liquor, contrary to the provisions of this chapter, the premises so leased and occupied shall be subject to a lien for and may be sold to pay all fines and costs assessed against any such occupant for any violation of this chapter; and such lien may be enforced by civil action in any court having jurisdiction; provided, that the person against whom such fines and costs are assessed shall be committed to the county jail until such fines and costs are paid; provided, that no imprisonment for nonpayment of fines and costs shall exceed the period of six months. § 18, c. 110, 1890.

§ 19, c. 110, 1890.

§ 7611. State's attorneys advise county judge. Informer protected. Whenever application is made to the county judge for a permit to sell intoxicating liquors under the provisions of this chapter, he shall notify the state's attorney thereof, and thereupon such state's attorney shall appear and advise with said county judge, with reference to the issuing of said permit and the approval of the bond. No person who shall inform of offenses under this chapter, or make complaint thereof, shall be liable for the costs incurred in such prosecution, unless the court or jury trying the case shall find and determine that such prosecution was malicious and without probable cause.

§ 20, c. 110, 1890.

§ 7612. Assistance for state's attorney. Any citizen may employ an attorney to assist the state's attorney to perform his duties under this chapter, and such attorney shall be recognized by the state's attorney and the court as associate counsel in the proceedings, and no prosecution shall be dismissed over the objections of such associate counsel until the reasons of the state's attorney for such dismissal, together with the objections thereto of such associate counsel, shall have been filed in writing, argued by counsel and fully considered by the court.

§ 21, c. 110, 1890.

§ 7613. Speedy judgment to be rendered. Exception. The court whose duty it shall be to render judgment in any action or proceeding growing out of a violation of the provisions of this chapter, shall immediately upon the conviction of the defendant render judgment; provided, that for prudential reasons and for the ordinary purposes of perfecting an appeal, judgment and sentence may be suspended for a period not exceeding thirty days, and then only upon the court or judge thereof entering in a public docket to be kept for that purpose, in his own handwriting, the cause of such suspension.

§ 22, c. 110, 1890.

§ 7614. Form of pleading. Presumptive evidence. Government receipt. In prosecutions under this chapter by indictment or otherwise, it shall not be necessary to state the kind or quantity of liquor sold or kept for sale, and shall not be necessary to describe the place where sold or kept for sale, except in prosecutions for keeping and maintaining a common nuisance, and in proceedings for enjoining the same, or when a lien is sought to be established against the place where such liquors are illegally sold or kept for sale; and it shall not be necessary in the first instance for the state to prove that the party charged did not have a permit to sell intoxicating liquors for the excepted purposes; and in any prosecutions for the second or subsequent offense, it shall not be requisite to set forth in the information or affidavit or indictment the record of the former conviction, but it shall be sufficient briefly to allege such conviction; and in all cases the person or persons to whom such intoxicating liquors shall have been sold in violation of this chapter shall be competent witnesses to prove such fact or any other fact tending thereto; and the members, shareholders or associates in any club or association shall be competent witnesses to prove any violation of the provisions of this chapter or any fact tending thereto. In actions or proceedings for the abatement of nuisances under this chapter evidence of the general reputation of the place designated in the complaint shall be admissible for the purpose of proving the existence of such nuisance, and in all cases, other than those when intoxicating liquor is lawfully sold by virtue of the provisions of this chapter, the fact that any person engaged in any kind of business has or keeps posted in or about his place of business a receipt or stamp showing payment of the

special tax levied under the laws of the United States upon the business of selling distilled, malt or fermented liquor, or the holding of a license from the government of the United States in the name of any person, persons or corporation to sell intoxicating liquor shall be held and deemed *prima facie* evidence against such person, persons or corporation, that he or they or it are keeping for sale and selling intoxicating liquors contrary to law. And upon trial of every indictment, information or contempt proceedings for a violation of the provisions of this chapter, proof of the finding of intoxicating liquor in the possession of the accused, in any place except his private dwelling house or its dependencies, or in such dwelling house if the same is a tavern, store, public eating house, grocery or other place of public resort, or in unusual quantities in the private dwelling house or its dependencies of any person keeping a tavern, store, public eating house, grocery or other place of public resort, unless in the possession of one legally authorized to sell the same, shall be received and acted upon by the court or judge as presumptive evidence that such liquor was kept for sale contrary to the provisions hereof. No person shall be excused from testifying touching any offense committed by another against any of the provisions of this chapter by reason of his testimony tending to criminate himself (the witness), but the testimony given by such person shall in no case be used against him.

§ 7615. Court's duty. Special charge to grand jury. It shall be and is hereby made the duty of all courts of this state before whom a grand jury is summoned, to charge such grand jury especially concerning this chapter, and direct said jury to inquire particularly of all violations of any of its provisions. § 23, c. 110, 1890.

§ 7616. When druggist prohibited from selling liquor upon any terms. Whenever the father, mother, brother, sister, wife, husband or guardian or any relative of any person shall notify any druggist that such person, naming him, is in the habit of becoming intoxicated, and shall forbid said druggist from selling, bartering or giving to such person any intoxicating liquors, it shall be unlawful for any such druggist, after such notice, to let such person have any intoxicating liquors upon any terms or conditions whatever. Any druggist who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars, and shall be imprisoned in the county jail not less than thirty days nor more than six months. § 24, c. 110, 1890.

§ 7617. Treating minor, penalty for. The treating or giving of any intoxicating liquors to any minor by any person other than the father, mother or guardian of such minor or any physician for medical purposes, shall be unlawful, and any person violating the provisions of this section shall for the first offense be deemed guilty of a misdemeanor, and for the second and each succeeding offense be deemed guilty of a felony, and upon conviction thereof shall be punished therefor as provided for unlawfully selling intoxicating liquors. § 25, c. 110, 1890.

§ 7618. Liability of common carrier. Any officer, agent or employee of a railroad company, express company or other common carrier who shall within this state knowingly receive, carry or deliver any intoxicating liquors to or for any person to be sold in violation of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred nor more

than five hundred dollars and be imprisoned in the county jail not less than thirty nor more than sixty days.

§ 27, c. 110, 1890.

§ 7619. Bonds forfeited. Actions and liabilities thereon.

In case any person has been arrested for any violation of this chapter and given a bond and the bond has been forfeited, and before the determination of the action on the bond the defendant has been surrendered to the sheriff by his bondsmen, the defendant shall stand committed until all costs to that date accrued on the criminal action are paid; and if he fails to pay the same the bondsmen are required to pay such costs in addition to the costs of the action on the bond and a reasonable attorney's fee, to be fixed by the court, for the prosecution of both the criminal charge and the action on the bond; provided, that no defendant shall be imprisoned for a longer period by virtue of this section than is prescribed for the first offense in section 7602 of this chapter.

§ 28, c. 110, 1890.

§ 7620. Penalty for neglect of duty of attorney, judge or auditor. Every state's attorney, county auditor or county judge who shall neglect or refuse to perform any duty required of him under this chapter, the punishment for which is not hereinbefore provided by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and in addition thereto shall forfeit his right longer to hold his office, and the court before whom such conviction is had shall order and adjudge such forfeiture.

§ 30, c. 110, 1890.

§ 7621. Payments for liquor void. Exception. All payments and compensation for intoxicating liquors sold in violation of this chapter, whether such payments or compensation is in money, goods, land, labor or anything else whatsoever, shall be held to have been received in violation of law and against equity and good conscience, and to have been received upon a valid promise and agreement of the receiver in consideration of the receipt thereof, to pay on demand to the person furnishing such consideration the amount of said money, or the just value of such goods and labor or other thing. All sales, transfers, conveyances, mortgages, liens, attachments, pledges and securities of every kind, which either in whole or in part shall have been made for or on account of intoxicating liquors sold in violation of this chapter, shall be utterly null and void against all persons in all cases, and no rights of any kind shall be acquired thereby, and no action of any kind shall be maintained in any court in this state for intoxicating liquors or the value thereof, sold in any other state or country, contrary to the law of said state or country, or with intent to enable any person to violate any provision of this chapter; nor shall any action be maintained for the recovery or possession of any intoxicating liquors or the value thereof, except in cases when persons owning or possessing such liquor, with lawful intent may have been illegally deprived of the same. Nothing, however, in this section, shall effect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration without notice of any illegality in its inception or transfer, or the holder of land or other property, who may have taken the same in good faith without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this chapter, and all evidence given in actions brought by or against such holders, shall be in no way affected by the provisions of this chapter.

§ 7622. **Giving liquor to Indian.** Every person who shall give, barter, sell or in any manner dispose of any intoxicating liquor to any Indian, shall be guilty of a misdemeanor. § 724, Pen. C.

§ 7623. **Being intoxicated in public place.** Every person being found intoxicated in any public place is punishable upon conviction before a justice of the peace by a fine of not more than twenty-five dollars nor less than five dollars, and be committed to the county jail until such fine is paid, but such imprisonment shall not exceed one day for every one dollar of the fine. § 725, Pen. C.
§ 1, c. 75, 1885, am'd.

§ 7624. **Selling liquor to pauper.** Every person who sells or gives to any person, knowing him to be a pauper or inmate of any poorhouse or almshouse, any strong or spirituous liquor or wine, without authority from the superintendent or physician of such poorhouse or almshouse, is punishable by a fine of twenty-five dollars. § 727, Pen. C.

§ 7625. **Selling liquors on boat, Sunday.** Every master or other person engaged in navigating any steamboat, who allows any liquors mentioned in the last section to be sold on his boat on Sunday, while stopping at any wharf, landing, city or town in this state, is guilty of a misdemeanor. § 729, Pen. C.

CHAPTER 64.

SELLING AND SMOKING OPIUM.

§ 7626. **Place for smoking opium deemed a nuisance.** Every room, building, cellar or other place or premises used or permitted to be used, for the smoking of opium or any of its preparations, is deemed and hereby declared to be a public nuisance. § 5, c. 121, 1885, am'd.

§ 7627. **Unlawfully keeping place for, and smoking opium.** Every person who, either: §§ 2, 3, 4, c. 121, 1885, am'd.

1. Lets or permits to be used, any building or portion of a building, knowing that it is intended to be used for committing or maintaining a public nuisance; or,

2. Owns or maintains a place where opium or any of its preparations, is smoked by other persons; or,

3. At any place sells or gives away any opium or its preparations, to be there smoked or otherwise used; or,

4. Visits or resorts to any such place for the purpose of smoking opium or its preparations,

Is guilty of a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding thirty days or by a fine not exceeding one hundred dollars, or by both.

§ 7628. **Jurisdiction of justice of the peace.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of this chapter, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law. § 6, c. 121, 1885, am'd.

CHAPTER 65.

SPECULATION IN OFFICE.

§§ 1, 2, c. 117, 1890, am'd. **§ 7629. Unlawful purchases by state treasurer.** Every person who while treasurer of this state, or the deputy or clerk of such treasurer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any state warrant, order or scrip, or any bill, account, claim or evidence of indebtedness against the state, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars.

§§ 1, 2, c. 117, 1890, am'd. **§ 7630. Unlawful purchases by city treasurer.** Every person who while treasurer of any city of this state, or the deputy or clerk of such treasurer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any city warrant, order or scrip, or any bill, account, claim or evidence of indebtedness against his city, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars.

§§ 1, 2, c. 117, 1890, am'd. **§ 7631. Unlawful purchases by county officers.** Every person who while an officer of any county of this state, or the deputy or clerk of such officer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any county warrant, order or scrip, or any bill, account, claim or evidence of indebtedness of his county, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars.

§§ 1, 2, c. 117, 1890, am'd. **§ 7632. Unlawful purchases by school district officers.** Every person who while an officer of any school district or corporation, or deputy or clerk of such officer, directly or indirectly, buys or traffics in or in anywise becomes a party to the purchase of any school warrant, order or scrip, or any bill, account, claim or evidence of indebtedness against his school district or corporation, for any sum less than the full face value thereof, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than fifty and not exceeding five hundred dollars.

§ 7633. Jurisdiction of justice of the peace. Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of the last four sections, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law.

§ 6, c. 43, 1883, am'd. **§ 7634. State's attorney acting contrary to official duty.** Every state's attorney who shall receive any fee or reward from or on behalf of any prosecutor or other individual for services or on account of any prosecution or business to which it shall be his official duty to attend, or who shall be concerned as attorney or counsel for either party other than the state or county, in any civil action depending on the same state of facts, or arising out of said facts or any of them, upon which a criminal prosecution commenced but undetermined shall depend, is guilty of a misdemeanor, and upon conviction thereof,

shall be punished by a fine of not less than one hundred and not exceeding five hundred dollars and may be removed from his office.

CHAPTER 66.

ALLOWING STALLION, BULL OR RAM TO RUN AT LARGE.

§ 7635. **Unlawful permitting stallion, bull or ram to run at large.** Every person who permits or allows, either: §§ 1, 2, c. 67, 1890. am'd.

1. A stallion or jack over the age of one year; or,
2. Any bull over the age of eight months; or,
3. Any ram during the months of September, October and November of each year,

To run at large is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of not less than ten, and not exceeding fifty dollars.

§ 7636. **Exceptions.** The provisions of the last section shall not be construed to include any stallion, jack, bull or ram kept in any herd. § 1, c. 67, 1890. am'd.

§ 7637. **Justice's court. Jurisdiction. Appeals.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of this chapter, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law. § 2, c. 67, 1890. am'd.

§ 7638. **Liable in civil action for damages.** Any person violating any of the provisions of this chapter shall be liable in a civil action to any person, directly or indirectly, injured thereby for all damages resulting therefrom. § 2, c. 67, 1890. am'd.

CHAPTER 67.

ADULTERATED DAIRY PRODUCTS.

§ 7639. **Selling imitation of butter without brand.** Any person who shall knowingly sell or offer for sale or procure the sale of, or make or manufacture, any article or substance in semblance of butter, not the legitimate product of the dairy and made exclusively of milk or cream, but into the composition of which the oil or fat of animals, or melted butter or any oil thereof, enters as a substitute for cream, in tubs, firkins or other original packages and not distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the word "oleomargarine," or "butterine," or "patent butter," as the case may be, in letters not less than one-fourth of an inch in width and one-half of an inch in length, or in retail packages not plainly and conspicuously labeled with said words "oleomargarine," § 1, c. 49, 1895.

or "butterine," or "patent butter," as the case may be, shall be guilty of a misdemeanor, and punished by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

§ 2, c. 49, 1895.

§ 7640. Imitation butter. "Quinness' patent." Any person or firm who shall sell or offer for sale, or make or manufacture, imitation butter or butter made of part cream and part caseine or other ingredients under what is known as "Quinness' patent," or process or any other similar process, whereby the caseine of milk and other ingredients are made to imitate and resemble genuine butter made from cream, shall stamp upon each package of the same on the top and side with lampblack and oil, the words "patent butter," in letters at least one-fourth of an inch wide and one-half of an inch long. Whoever violates the provisions of this section is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

§ 3, c. 49, 1895.

§ 7641. Character of product must be designated. Any person or firm who shall sell or offer for sale, or make or manufacture out of any oleaginous substance or substances, or any compound of the same or compound other than that produced from unadulterated milk, any article designed to take the place of cheese, or any imitation of cheese produced from pure milk, or any article termed "filled cheese," shall stamp upon each package of the same on the top and side with lampblack and oil, the words "filled cheese," or words that shall designate the exact character and quality of the product, in letters at least one-fourth of an inch wide and one-half of an inch long. Whoever violates the provisions of this section is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

§ 4, c. 49, 1895.

§ 7642. Patent butter and cheese. Card stating ingredients. Whoever sells or offers for sale any imitation or patent butter or cheese, as described in the foregoing sections of this chapter, shall give to each purchaser of said goods a printed card stating correctly the different ingredients contained in the said compound. Whoever violates the provisions of this section is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than one hundred dollars, or shall be confined in the county jail not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

§ 5, c. 49, 1895.

§ 7643. Possession prima facie evidence of guilt. The having in possession by any person or firm, of any article or substance prohibited by this chapter, shall be considered prima facie evidence that the same is kept by such person or firm in violation of its provisions, and the state dairy commissioner shall be authorized to seize upon and take possession of any such article or substance, and upon the order of any court which has jurisdiction, he shall sell the same for any purpose other than to be used for food; the proceeds derived from the sale of imitation butter shall be paid one-half to the

informer and one-half into the state treasury, to be placed to the credit of the state dairy commissioner's fund.

§ 7644. Specimens analyzed. Certificate. Evidence. § 6, c. 49, 1895.
Samples or specimens of any article in imitation of butter or suspected of being of a spurious character, shall be analyzed or otherwise satisfactorily tested as to compounds by the chemist of the agricultural college at Fargo, free of expense; and a certificate of the analysis, sworn to by the analyzer, shall be admissible as evidence in all prosecutions under this chapter.

§ 7645. Packages not branded or labeled. The sale or offer for sale of the substance mentioned in the foregoing section in packages not branded, stamped, marked or labeled as in this chapter required, shall be prima facie evidence of knowledge of the character of such substance on the part of the person so selling or offering the same for sale, and his employer. § 7, c. 49, 1895.

§ 7646. Stencils. Names. Reports. Every cheese factory, creamery, or combined cheese factory and creamery, engaged in the manufacture of butter and cheese, shall procure a stencil or brand bearing a suitable device and words which shall clearly designate the quality of the product manufactured and the number and location of the factory, and may contain a special or private brand or name of said factory; every brand shall be used upon the outside of the cheese and also upon the package containing the same, but in the case of butter, on the package only; and shall report annually to the state commissioner of agriculture and labor, who by virtue of his office is state dairy commissioner, the name, location and number of each factory using the said brand, and the name or names of the persons at each manufactory authorized to use the same, together with a copy of each stencil or brand, and the state dairy commissioner shall keep a book in which shall be registered the same. Whoever violates the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten nor more than fifty dollars, for each and every offense. § 9, c. 49, 1895.

§ 7647. Provisions construed. Nothing in this chapter shall be so construed as to prohibit the shipment of butter and cheese without unloading through the state of North Dakota. § 10, c. 49, 1895.

§ 7648. Butter and cheese defined. For the purposes of this chapter the term "butter," or "cheese," shall be understood to mean the product usually known by that name, and which is manufactured exclusively from milk or cream or both. § 8, c. 49, 1895.

CHAPTER 68.

SELLING ADULTERATED AND UNWHOLESOME FOOD
OR MEDICINE.

§ 1, c. 64, 1885,
am'd.

§ 7649. Adulterating and selling adulterated food or medicine. Every person who, either:

1. With intent that the same may be used as food, drink or medicine for man, sells or offers or exposes for sale, any article whatever, which to his knowledge is tainted or spoiled, or for any cause unfit to be used as food, drink or medicine; or,

2. Knowingly sells any article intended as food or drink for man which contains a sufficient quantity of any drug or other substance to render such article injurious to health, or compounds the same; or,

3. Adulterates or dilutes so as to render it injurious to health, for the purpose of sale as unadulterated or undiluted, any substance intended as food, drink or medicine for man,

Is guilty of a misdemeanor.

§ 1, c. 64, 1885,
am'd.

§ 7650. Calf less than four weeks old. Every person who knowingly, either:

1. Kills or causes to be killed, for the purpose of sale as food for man, a calf less than four weeks old; or,

2. Sells or has in his possession with intent to sell as food for man, the meat of any calf killed when less than four weeks old.

Is guilty of a misdemeanor and upon conviction thereof, is punishable by imprisonment in the county jail not exceeding thirty days or by fine not exceeding fifty dollars, or by both.

§ 1, c. 64, 1885,
am'd.

§ 7651. Meat may be seized. The meat of any calf killed when less than four weeks old and exposed for sale or kept with intent to sell for food, may be seized without warrant and destroyed by any health officer, sheriff, deputy sheriff or peace officer.

§ 2, c. 64, 1885,
am'd.

§ 7652. Magistrate may issue warrant. Procedure. Any magistrate having reasonable cause to believe by complaint on oath made to him, that the meat of any calf killed when less than four weeks old, is kept or concealed within his county by any person, contrary to the provisions of section 7650, may issue his warrant to any peace officer of such county commanding him, in the daytime only, to search for and, if found, to seize such meat and to notify such owner or keeper of such seizure and that he appear forthwith before the magistrate issuing such warrant to show cause why such meat should not be destroyed. If such owner or keeper does not appear, or if upon investigation before such magistrate it is determined that such meat is kept in violation of such section, the magistrate shall issue his warrant to such officer commanding him forthwith to destroy such meat and such officer shall proceed accordingly, or if it is determined that such meat is not kept contrary to the provisions of such section the same shall be returned to the place where seized. The costs of the proceedings, if contested, shall be taxed against the person claiming such meat if defeated and collected upon execution issued against him, as in a civil action, but if such proceedings are not contested the costs shall be taxed and paid by the county wherein such proceedings are had.

CHAPTER 69.

FOULING THE PUBLIC WATERS OF THIS STATE.

§ 7653. **Fouling public waters.** Every person who deposits or places or causes to be deposited or placed any dead animal, offal or other refuse matter offensive to the sight or smell or deleterious to health, upon the banks or in the waters of any lake or stream so far as the same is within the jurisdiction of this state, is guilty of a misdemeanor, and upon conviction thereof, is punishable by a fine of not less than twenty and not exceeding one hundred dollars.

1. c. 103, 1881.
1. c. 70, 1883.
1. c. 129, 1889.
am'd.

§ 7654. **Extent of last section.** The provisions of the last section shall be construed to include privies and privy vaults and any stable, shed, pen, yard or corral wherein is kept any horse, cattle, sheep or swine and located nearer than sixty feet from the top of the bank of such lake or stream, and also any slaughterhouse, grave, graveyard or cemetery located nearer than eighty feet therefrom. But the provisions of said section shall not be construed to prevent any incorporated city within this state from running its sewers into any river; provided, that where there is a dam across said river within the corporate limits of any such city, any such sewer shall connect with such river below such dam.

1. c. 129, 1889.
1. c. 37, 1893.
am'd.

§ 7655. **Jurisdiction of justice's court.** Any justice of the peace within his county shall have concurrent jurisdiction with the district court to hear, try and determine any prosecution arising under the provisions of sections 7649, 7650 and 7653, and upon conviction to impose the punishment prescribed, subject to defendant's right to appeal to the district court as provided by law.

2. c. 103, 1881.
3. c. 70, 1883.
5. c. 129, 1889.
am'd.

CHAPTER 70.

UNLAWFUL INTERFERENCE WITH TELEGRAPH AND TELEPHONE LINES.

§ 7656. **Unlawful use of telegraph or telephone lines.** Every person who, willfully or fraudulently, either:

§ 1. c. 128, 1893.
am'd.

1. Makes any connection with or cuts, breaks or taps in any unauthorized manner any telegraph or telephone line, wire or cable under the control of any other person or company; or,

2. Reads or copies by the use of telegraph or telephone instruments, or otherwise in an unauthorized manner, any authorized communication or message being sent, transmitted, conveyed or delivered by telegraph or telephone under the control of any other person or company; or,

3. Prevents, obstructs or delays by any unauthorized means or contrivance whatever, the sending, conveyance, transmission or delivery in this state of any such communication or message by telegraph or telephone; or,

4. Aids, employs, agrees or conspires with any other person to do any of such acts or things,

Is guilty of a felony, and upon conviction thereof is punishable by imprisonment in the penitentiary not less than one and not exceeding five years, or by a fine of not less than two hundred and not exceeding five hundred dollars, or by both.

CHAPTER 71.

MISCELLANEOUS CRIMES.

§ 730, Pen. C.
am'd.

§ 7657. State's attorney and his partners. Every attorney who, directly or indirectly, advises in relation to, or aids or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided or promoted by any person as state's attorney or other public prosecutor, with whom such person is directly or indirectly connected as a partner, or who takes or receives, directly or indirectly, from or on behalf of any defendant therein, any valuable consideration, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he forfeits his license to practice.

§ 731, Pen. C.
am'd.

§ 7658. Prosecutors advising defense. Every attorney who, having prosecuted or in any manner aided or promoted any action or proceeding in any court, as state's attorney or other public prosecutor, afterward, directly or indirectly, advises in relation to or takes any part in, the defense thereof, as attorney or otherwise, or takes or receives any valuable consideration from or on behalf of any defendant therein, upon any understanding or agreement whatever, express or implied, having relation to the defense thereof, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his license to practice.

§ 732, Pen. C.

§ 7659. Attorneys may defend themselves. The last two sections do not prohibit an attorney from defending himself in person, as attorney or as counsel, when prosecuted either civilly or criminally.

§ 733, Pen. C.

§ 7660. Intimidating laborers. Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, apprentice, workman, laborer, servant or other person employed by another, from continuing or performing his work, or from accepting any new work or employment, or to induce such hired person to relinquish his work or employment, or to return any work he has in hand before it is finished, is guilty of a misdemeanor.

§ 734, Pen. C.

§ 7661. Intimidating employers. Every person who, by any use of force, threats or intimidation, prevents or endeavors to prevent another from employing any person, or to compel another to employ any person, or to force or induce another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, apprentices, workmen, laborers, servants or

other persons employed by him, or their rate of wages or time of service, is guilty of a misdemeanor.

§ 7662. Conspiracies and mobs against mines. In all cases when two or more persons shall associate themselves together for the purpose of obtaining possession of any lode, gulch or placer claim, then in the actual possession of another, by force and violence or by threats of violence, or by stealth, and shall proceed to carry out such purpose by making threats against the party or parties in possession, or who shall enter upon such lode or mining claim for the purpose aforesaid, or who shall enter upon or into any lode, gulch, placer claim or quartz mill or other mining property, or, not being upon such property but within hearing of the same, shall make any threats or make use of any language, sign or gesture calculated to intimidate any person or persons at work on said property from continuing work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending, shall, upon conviction, be punished by imprisonment in the county jail not exceeding six months and not less than thirty days, and by fine not exceeding two hundred and fifty dollars, such fine to be discharged either by payment or by confinement in such jail until such fine is discharged at the rate of two dollars and fifty cents per day. On trials under this section, proof of a common purpose of two or more persons to obtain possession of property as aforesaid, or to intimidate laborers as above set forth, accompanied or followed by any of the acts above specified, by any of them, shall be sufficient evidence to convict any one committing such acts, although the parties may not be associated together at the time of committing the same. § 735, Pen. C.

§ 7663. Taking saw logs. Any person who shall willfully and without authority take any saw logs that may be on any river or on the land adjoining or near a river, which may have floated down said river or on to said land, and shall remove or attempt to remove the same, or who shall cut or split said logs or otherwise destroy or injure them, shall be deemed guilty of a misdemeanor, and upon conviction, when the value of the logs exceeds one hundred dollars, be punished by imprisonment in the county jail not more than one year nor less than three months, and by fine not to exceed one hundred and not less than ten dollars; and when the value of the logs is one hundred dollars or less, the punishment shall be by fine not exceeding eighty and not less than twenty dollars. § 736, Pen. C.

§ 7664. Receiving stolen logs. Any person who shall purchase, receive or secrete saw logs so taken or removed, or who shall cut or otherwise injure logs so taken or removed, knowing them to have been so taken or removed, shall be punished as prescribed in the preceding section. § 737, Pen. C.

§ 7665. Concealing estrays or lost goods. Any person who shall attempt to conceal any estray, or any lost goods, found or taken up by him, or shall efface any marks or brands thereon, or carry the same beyond the limits of the state, or knowingly permit the same to be done, or shall willfully fail to cause the same to be advertised, sold or otherwise dealt with as provided by the statute on estray and lost goods, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one hundred dollars nor less than ten dollars, one-half to be paid to the informer and the other half into the county treasury. § 738, Pen. C.

§ 739, Pen. C.

§ 7666. Hours for labor for woman or child. Every owner, stockholder, overseer, employer, clerk or foreman, of any manufactory, workshop or other place used for mechanical or manufacturing purposes, who, having control, shall compel any woman or any child under eighteen years of age, or permit any child under fourteen years of age, to labor in any day exceeding ten hours, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine not exceeding one hundred and not less than ten dollars.

§ 740, Pen. C.

§ 7667. Harboring Indians. Every person who shall harbor or keep on or about his premises or place of abode, within any organized county in this state, any Indian or Indians who have not adopted the manners and habits of civilized life, or who induces or encourages any such Indian or Indians to camp, remain or hunt for any time or for any purpose within any village or settlement of white people, or in the vicinity of such village or settlement within any organized county in this state, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine not less than twenty-five dollars for each Indian so kept, harbored or induced to remain, and shall stand committed until such fine and costs are paid; provided, the aggregate of such fine upon each conviction, shall not exceed one hundred dollars.

§ 579, Pen. C.
am'd.

§ 7668. Removing or destroying chattels subject to lien. Every person having in his possession or under his control any personal property upon which there is known to him to be a subsisting lien, either by operation of law or by contract, who willfully destroys, removes from the county, conceals, sells or in any manner disposes of otherwise than as prescribed by law, or materially injures such property or any part thereof, without the written consent of the then holder of such lien, is guilty of:

1. A misdemeanor, if the value of the property does not exceed five hundred dollars; or,
2. A felony, if the value of the property exceeds such sum.

§ 7669. Wrongful use of seed grain. Every person who having procured upon credit under the provisions of chapter 82 of the civil code, any seed to be sown or planted upon any designated tract or piece of land, either:

1. Uses the same or any part thereof for any other purpose; or,
2. Sows or plants the same or any part thereof upon any tract or piece of land other than that designated, without the written consent of the party who furnished such seed, is guilty of a misdemeanor.

§ 742, Pen. C.

§ 7670. Injurious acts not expressly forbidden. Every person who willfully and wrongfully commits any act which grossly injures the person or property of another, or which grossly disturbs the public peace or health, or which openly outrages public decency, and is injurious to public morals, although no punishment is expressly prescribed therefor by this code, is guilty of a misdemeanor.

§ 7671. Unlawful obligations in writing. Every person who takes any obligation in writing for any lightning rod or any of its attachments, or for any patent right, or right claimed to be a patent right, or for which any stallion shall form the whole or any part of the consideration, shall before it is signed by the maker stamp or write in red ink across the face of such written obligation in plain legible writing or print the words "Given for a lightning rod," or "Given for a patent right," or "Given for a stallion," as the case may require. Such obligation so stamped shall not be negotiable and

shall be subject to defenses in the hands of every owner or holder thereof. Any person who shall violate the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than two hundred and fifty and not exceeding one thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment and shall be liable in a civil action to the party injured for all damages sustained by him.

§ 7672. Unauthorized sending pauper out of county. §§ 37, 38, c. 33,
Pol. C.
am'd. Every person who sends or causes to be sent any pauper or person who is or is likely to become an object of public charity, into any county of this state other than the county where such pauper or person properly belongs, with intent to relieve the county from which such pauper or person is sent from his support, or to cause the county to which he is sent to support him, is guilty of a misdemeanor.

§ 7673. Where prosecuted. Prosecutions for any violation of the last section may be commenced and prosecuted either in the county from which such pauper or person is sent or in the county to which he is sent.

§ 7674. Fraudulently obtaining food or accommodation at inns. § 1, c. 71, 1895. A person who obtains any food or accommodation at any inn, hotel or boarding house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at any inn, hotel or boarding house by use of any false pretense, or who, after obtaining food or accommodations at an inn, hotel or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food and accommodation, is guilty of a misdemeanor, and on conviction thereof shall be fined not more than one hundred dollars, nor less than five dollars, or imprisoned in the county jail for not more than thirty nor less than ten days, or both such fine and imprisonment at the discretion of the judge or justice of the peace before whom the trial is held.

§ 7675. Abusing insane person. § 29, c. 23, 1879,
am'd. Every person who has the care of an insane person, or is restraining such person either with or without authority, and treats such person with wanton severity, harshness or cruelty or in anyway abuses such person, is guilty of a misdemeanor.

CHAPTER 72.

GAME AND FISH.

§ 7676. Birds, animals and fish property of state. All birds and animals wild by nature, and all fish in the public waters within the jurisdiction of this state, are, except as prescribed in section 3268 of the civil code, the property of the state.

§ 7677. Shooting or killing restricted. § 1, c. 63, 1883.
§ 2, c. 58, 1887.
am'd. Every person who, either:

1. Shoots or kills any prairie chicken, pinnated grouse, sharp-tailed grouse, ruffed grouse, woodcock, plover, wild duck, wild goose or brant, between the first day of December and the first day of September following, or any song bird at any time; or,

2. 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,

3. 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 subdivision 1 of this section; or,

4. Wantonly destroys any nest of eggs of any of the birds mentioned in subdivision 1 of this section; or,

5. Shoots or kills any buffalo, elk, deer, antelope, caribou or mountain sheep, between the fifteenth day of December and the first day of November following; or,

6. At any time, uses or employs any hound or dog in running or driving any of the animals mentioned in subdivision 5 of this section; or,

7. Sets any spring or other gun, trap, snare or other device to kill, wound or destroy any of the animals mentioned in subdivision 5 of this section; or,

8. Knowingly hunts, in any way, upon the inclosed or cultivated lands of another without the consent of the owner or his agent or tenant; or,

9. Shoots or kills in any one day more than twenty-five of the game birds mentioned in subdivision 1, or more than five of the animals mentioned in subdivision 5 of this section,

Is guilty of a misdemeanor and, upon conviction thereof before any justice of the peace of the county, is punishable by a fine of ten dollars for each of the birds mentioned in subdivision 1 of this section so shot or killed or nest of eggs so destroyed and for each violation of subdivision 2, 3, or 8 of this section; and one hundred dollars for each animal mentioned in subdivision 5 of this section, so shot or killed, and one hundred dollars for each violation of subdivision 6, 7, or 9 of this section.

§ 2, c. 63, 1883.
4, c. 58, 1887.
am'd.

§ 7678. Having same in possession. Every person who has in his possession any of the birds or animals mentioned in the last section killed during the time in which the killing of the same is, by the last section, prohibited, whether killed by himself or another person, is 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.

§§ 1, 3, c. 59.
1883.
am'd.

§ 7679. Catching fish restricted. Every person who, either:

1. Takes, catches, kills or destroys any fish of any kind in any of the lakes, streams or other waters of this state, except the Missouri river, in any manner other than by angling with hook and line; or,

2. Between the first day of November and the following first day of May in each year takes, catches, kills or destroys in any manner or by any device in any of the waters of this state, except the Missouri river, any pike, pickerel, perch, bass or muscalonge for any purpose other than for propagating or breeding the same; or,

3. Exposes any such fish for sale during such period,

Is guilty of a misdemeanor and upon conviction thereof, is punishable by a fine of not less than five and not exceeding twenty-five dollars, and for every subsequent offense by imprisonment in the county jail not exceeding thirty days, or by a fine of not less than ten and not exceeding one hundred dollars, or by both.

§ 7680. Fishing within five hundred feet of dam prohibited. It shall be unlawful for any person to take, catch, kill or destroy with hook and line or in any other manner whatever, any fish at any time at any of the milldams, mill races or any of the fishways, sluices or aprons in any of the waters of this state, or within five hundred feet measured from the same up stream, or to cut open the ice and remove any fish from the waters through the opening thus made, or remove fish from any of the waters of this state at any time by means of spearing, seines, nets or any other device or by any other manner, except with hook and line, and in no event shall the number of fish taken, caught or killed by any one person exceed twenty-five fish in any one day. § 3, c. 64, 1895.

§ 7681. Punishment for illegal fishing. Misdemeanor. Whoever shall offend against any of the provisions of the last section shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than ten and not more than twenty-five dollars, and costs of prosecution, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or both fine and imprisonment in the discretion of the court, for each and every fish thus taken, caught, killed or destroyed contrary to the provisions of such section. § 3, c. 64, 1895.

§ 7682. Seines and nets to be destroyed. Every seine, net or other unlawful device used or intended to be used to catch, take, kill or destroy any fish in this state contrary to the laws thereof is forfeited to the state, and it is the duty of every peace officer of this state to seize and destroy any such device whenever the same is being used in the violation of the last section. § 4, c. 64, 1895.

§ 7683. Shipping out of state. Every person who within this state ships or receives for shipment beyond the limits of this state any of the game birds or animals mentioned in section 7677 or any of the fish mentioned in section 7679, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine of ten dollars for each game bird or fish so shipped or received and one hundred dollars for each animal so shipped or received. § 1, c. 59, 1887.
§ 5, c. 58, 1887.
am'd.

CHAPTER 73.

GENERAL PROVISIONS.

§ 7684. Acts punishable in different ways. An act or omission which is made punishable in different ways by different provisions of this code or other penal statute may be punished under either of such provisions except that in the cases specified in sections 7696 to 7699, inclusive when the previous conviction is charged in the information or indictment and found from the evidence by the jury, the punishments therein prescribed are substituted for those prescribed for a first offense, but in no case can it be punished under more than one; and an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. § 743, Pen. C.

- § 744, Pen. C. **§ 7685. Acts punishable in another state.** An act or omission declared punishable by this code, is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in this code.
- § 745, Pen. C. **§ 7686. Conviction or acquittal in another state.** But whenever it appears upon the trial of an information or indictment that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of another state, government or country founded upon the act or omission in respect to which he is upon trial, it shall be a sufficient defense.
- § 746, Pen. C. **§ 7687. Contempts punishable as crimes.** A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.
- § 747, Pen. C. **§ 7688. Mitigation of punishment.** But when it is made to appear at the time of passing sentence upon a person convicted upon information or indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed, in its discretion.
- § 748, Pen. C. **§ 7689. Aiding in misdemeanor.** Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.
- § 7690. Neglect of official duty. Removal from office.** In addition to the penalty affixed by express terms to every neglect or violation of official duty on the part of public officers, county, city, town or township, or state officers not liable to impeachment, when it is not so expressly provided, they may, in the discretion of the court, be removed from office.
- § 749, Pen. C. **§ 7691. When sending letter complete.** In the various cases in which the sending of a letter is made criminal by this code, or by any statute of this state, the offense is deemed complete from the time when such letter is deposited in any post office, or in any other place, or delivered to any person with intent that it shall be forwarded; and the party may be prosecuted and tried in any county or judicial district in which said letter is so deposited or delivered, or in which it shall be received by the person to whom it is addressed.
- § 750, Pen. C. **§ 7692. Failure to perform duty.** No person is punishable for an omission to perform an act, when such act has been performed by another person acting in his behalf, and competent by law to perform it.
- § 751, Pen. C.
am'd. **§ 7693. Attempts to commit crime.** An act done with intent to commit a crime and tending but failing to effect its commission, is an attempt to commit that crime. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be prosecuted for such crime.
- § 752, Pen. C. **§ 7694. Attempts. Failures to commit crimes. Punishment.** Every person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime but fails, or is prevented or intercepted in the perpetration thereof, is punish-

able, when no provision is made by law for the punishment of such attempt, as follows:

1. If the offense so attempted is punishable by imprisonment in the penitentiary for four years or more, or by imprisonment in a county jail, the person guilty of such attempt is punishable by imprisonment in the penitentiary or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction for the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the penitentiary for any time less than four years, the person guilty of such attempt is punishable by imprisonment in a county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment, and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

§ 7695. Restrictions. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed. § 753, Pen. C.

§ 7696. Second offense, first five years or less. Every person who, having been convicted of any offense punishable by imprisonment in the penitentiary, commits any crime after such conviction, is punishable therefor as follows: § 754, Pen. C.

1. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the penitentiary for any term exceeding five years, such person is punishable by imprisonment in the penitentiary for a term not less than ten years.

2. If such subsequent offense is such that, upon a first conviction the offender would be punishable by imprisonment in the penitentiary for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the penitentiary not exceeding ten years.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if committed, would be punishable by imprisonment in the penitentiary, then the person convicted of such subsequent offense is punishable by imprisonment in the penitentiary not less than one and not exceeding five years.

§ 7697. Attempts to conceal death of child. Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body, which, if born alive, would be a bastard, or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, is punishable by imprisonment in the penitentiary not exceeding five years and not less than two. § 755, Pen. C.

§ 7698. Second offense, first five years or more. Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by

imprisonment in the penitentiary, commits any crime after such conviction, is punishable as follows:

1. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the penitentiary for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the penitentiary for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed upon a conviction for such first offense.

3. If such subsequent conviction is for petit larceny, or for any attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary, then such person is punishable by imprisonment in such prison for a term not exceeding five years.

§ 757, Pen. C.

§ 7699. First conviction not in this state. Every person who has been convicted in any other state, government or country of an offense which, if committed within this state, would be punishable by the laws of this state by imprisonment in the penitentiary, is punishable for any subsequent crime committed within this state, in the manner prescribed in the last three sections, and to the same extent as if such first conviction had taken place in a court of this state.

§ 758, Pen. C.

§ 7700. Two or more convictions. Sentences. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

§ 759, Pen. C.
am'd.
§ 1, c. 67, 1885.

§ 7701. Imprisonment for life. Whenever any person is declared punishable for a crime by imprisonment in the penitentiary for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than such as are prescribed.

§ 760, Pen. C.

§ 7702. Time sentence limited to expire. Whenever a person is sentenced to be imprisoned in the penitentiary, for a longer period than one year, it is the duty of the court before which the conviction is had, to limit the time of the sentence so that it will expire, as near as may be, between the month of March and the month of November, unless the exact period of the sentence is fixed by law.

§ 761, Pen. C.

§ 7703. Juvenile offenders. Whenever any person under the age of sixteen years is convicted of an offense punishable by imprisonment in the penitentiary, the court before whom such conviction was had may, in its discretion, sentence the person so convicted to imprisonment in the county jail of the county in which such conviction was had.

§ 762, Pen. C.

§ 7704. Fine may be added to imprisonment. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars in addition to the imprisonment prescribed.

§ 7705. **When term of imprisonment commences to run.** The term of imprisonment fixed by the judgment in a criminal action commences to run only from the time of the sentence of the defendant; but if thereafter, during such term, the defendant escapes or by any legal means is temporarily released from such imprisonment and subsequently returned thereto the time during which he was at large must not be computed as part of such term.

§ 7706. **Civil rights suspended.** A sentence of imprisonment in the penitentiary for any term less than for life, suspends all the civil rights of the person so sentenced, and forfeits all public offices, and all private trusts, authority or power, during the term of such imprisonment. § 763, Pen. C.

§ 7707. **Civil death.** A person sentenced to imprisonment in the penitentiary for life, is thereafter deemed civilly dead. § 764, Pen. C.

§ 7708. **Last two sections limited.** The provisions of the last two sections must not be construed to render the person therein mentioned incapable of making and acknowledging a sale or conveyance of property.

§ 7709. **Person convicted under protection of law.** The person of a convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced. § 765, Pen. C.

§ 7710. **Conviction does not work forfeiture.** No conviction of any person for crime works any forfeiture of any property, except in cases where a forfeiture is expressly imposed by law. § 766, Pen. C.

§ 7711. **Testimony. Perjury. Privilege.** The various sections of this code which declare that evidence obtained upon the examination of a person as a witness shall not be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination. § 767, Pen. C.

§ 7712. **Definitions of terms.** Wherever the terms mentioned in the following sections are employed in this code, they are deemed to be employed in the senses hereafter affixed to them, except when a different sense plainly appears. § 768, Pen. C.

§ 7713. **Willfully defined.** The term "willfully," when applied to the intent with which an act is done or omitted implies simply a purpose or willingness to commit the act or omission referred to. § 769, Pen. C. am'd.

§ 7714. **Negligent. Negligence.** The terms "neglect," "negligence," "negligent," and "negligently," when so employed, import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns. § 770, Pen. C.

§ 7715. **Corruptly.** The term "corruptly," when so employed, imports a wrongful design to acquire, or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person. § 771, Pen. C. am'd.

§ 7716. **Malice. Maliciously.** The terms "malice," and "maliciously," when so employed, import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law. § 772, Pen. C.

§ 7717. **Knowingly.** The term "knowingly," when so applied, imports only a knowledge that the facts exist which bring the act or § 773, Pen. C.

omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

§ 774, Pen. C. **§ 7718. Bribe.** The term "bribe," signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

§ 775, Pen. C. **§ 7719. Vessel.** The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, and steamships, canal boats, and every structure adapted to be navigated from place to place.

§ 776, Pen. C. **§ 7720. Peace officer.** The term "peace officer," signifies any sheriff, coroner, constable, policeman, watchman of an incorporation, city or town, and such other officer or officers whose duty it is made to enforce and preserve the public peace.

§ 777, Pen. C.
am'd. **§ 7721. Magistrate.** The term "magistrate," signifies any judge of the supreme court or of the district court, justice of the peace, police magistrate and such other officer or officers as are authorized and empowered to issue warrants for the arrest of persons accused of crime.

§ 778, Pen. C. **§ 7722. Signature.** The term "signature," includes any name, mark or sign, written with intent to authenticate any instrument or writing.

§ 779, Pen. C.
am'd. **§ 7723. Writing.** The term "writing," includes printing and typewriting.

§ 780, Pen. C. **§ 7724. Real property.** The term "real property," includes every estate, interest and right in lands, tenements and hereditaments.

§ 781, Pen. C. **§ 7725. Personal property.** The term "personal property," includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any pecuniary obligation, right or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged or diminished.

§ 782, Pen. C. **§ 7726. Property.** The term "property," includes both real and personal property.

§ 783, Pen. C. **§ 7727. Person defined.** The word "person," includes corporations as well as natural persons.

§ 784, Pen. C. **§ 7728. Person further defined.** When the term "person," is used in this code to designate the party whose property may be the subject of any offense, it includes this state, any other state, government or country which may lawfully own any property within this state, and all public and private corporations or joint associations, as well as individuals.

§ 785, Pen. C. **§ 7729. Singular includes plural.** The singular number includes the plural, and the plural the singular.

§ 786, Pen. C. **§ 7730. Genders.** Words used in the masculine gender, comprehend as well the feminine and neuter.

§ 787, Pen. C. **§ 7731. Present tense.** Words used in the present tense include the future, but exclude the past.

§ 788, Pen. C. **§ 7732. Intent to defraud.** Whenever, by any of the provisions of this code an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever.

§ 7733. **Civil remedies not affected.** The omission to specify or affirm in this code, any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same. § 789, Pen. C.

§ 7734. **Proceedings to impeach or remove.** The omission to specify or affirm in this code any ground of forfeiture of a public office or other trust or special authority conferred by law, to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension. § 790, Pen. C.

§ 7735. **Military or other authorized punishment.** This code does not affect any power conferred by law upon any court martial or other military authority or officer to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt; nor any provisions of the laws relating to apprentices, bastards, disorderly persons, Indians and vagrants. § 791, Pen. C.

§ 7736. **Fines go to state school fund.** All fines, forfeitures and pecuniary penalties, prescribed as a punishment, by any of the provisions of this code, when collected, shall be paid into the treasury of the proper county, to be added to the state school fund. § 792, Pen. C. am'd.
§ 2, c. 111, 1885. am'd.
§ 154, Const.

§ 7737. **Costs taxed and collected.** In all cases of conviction, the costs of the prosecution shall be taxed against the defendant, and enforced as other judgments in criminal causes. § 793, Pen. C.

§ 7738. **Code construed.** Continuation of existing statutes. The provisions of this code so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments.

§ 7739. **This code not retroactive. Exceptions.** The provisions of this code shall not apply nor extend to any act done or offense committed prior to the taking effect hereof, except as specially provided herein; but the provisions of law now in force, and applicable to the crime to which this code relates as well in respect to the penalty affixed as in all other respects (except matters of procedure, and any provisions alleviating the punishment to be imposed upon conviction in any case), shall hereafter be and remain in full force and effect as to any such offense committed before the taking effect of this code.

CODE OF CRIMINAL PROCEDURE.

CHAPTER 1.

PRELIMINARY PROVISIONS.

§ 7740. **Title.** This act shall be known as the code of criminal procedure of the state of North Dakota. § 1, C. Cr. P. am'd.

§ 7741. **Crime defined. Punishments.** A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: § 2, C. Cr. P. am'd.

1. Death.
2. Imprisonment.
3. Fine.
4. Removal from office.
5. Disqualification to hold and enjoy any office of honor, trust or profit under this state, or
6. Other penal discipline.

§ 7742. **Division of crimes.** Crimes or public offenses are divided into: § 3, C. Cr. P.

1. Felonies.
2. Misdemeanors.

§ 7743. **Felony defined. Misdemeanor defined.** A felony is a crime which is or may be punishable with death or imprisonment in the penitentiary; every other crime is a misdemeanor. When a crime punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in a county jail, in the discretion of the court or jury, it is, except when otherwise specifically declared by law to be a felony, a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary. §§ 4, 5, C. Cr. P. am'd.

§ 7744. **Punishment only on conviction.** No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof. § 6, C. Cr. P.

§ 7745. **How crimes prosecuted. Exceptions.** Every public offense must be prosecuted by information or indictment, except: § 7, C. Cr. P. am'd.

1. When proceedings are had for the removal of a civil officer of the state, or an officer of some political subdivision thereof.
2. Breaches of military discipline arising in the militia, when in actual service, and in the land and naval forces in time of war or

public danger, or which this state may keep, with the consent of congress, in time of peace.

3. Offenses tried in justices', police and county courts in cases concerning which lawful jurisdiction is or may be conferred upon such courts.

§ 8. C. Cr. P. § 7746. **Criminal action defined.** The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

§ 9. C. Cr. P. am'd. § 7747. **How prosecution entitled.** A criminal action is prosecuted in the name of the state of North Dakota as a party against the party charged with the offense.

§ 10. C. Cr. P. am'd. § 7748. **Party defendant.** The party prosecuted in a criminal action is designated in this code as the accused or as the defendant.

§ 11. C. Cr. P. am'd. § 7749. **Rights of defendant.** In all criminal prosecutions the party accused shall have the right:

1. To appear and defend in person and with counsel.
2. To demand and be informed of the nature and cause of the accusation.
3. To meet the witnesses against him face to face.
4. To have the process of the court to compel the attendance of witnesses in his behalf.

5. To a speedy and public trial, and by an impartial jury of the county in which the offense is alleged to have been committed or is triable, but subject to the right of the state to have a change of the place of trial for any of the causes for which the party accused may obtain the same.

§ 12. C. Cr. P. am'd. § 7750. **Only once prosecuted.** No person can be twice put in jeopardy for the same offense; nor can any person be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted or put in jeopardy, except as provided by law for new trials.

§ 13. C. Cr. P. § 7751. **Witness against self. Restraint, extent of.** No person can be compelled in a criminal action to be a witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

§ 14. C. Cr. P. am'd. § 7752. **How conviction can be had.** No person can be convicted of a crime or public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon a judgment against him, his demurrer having been overruled, or upon a judgment of a justice's court, or such other courts as are or may be created by law for cities, incorporated towns and villages, or county courts exercising increased jurisdiction as provided in section 111 of the constitution, in cases in which such judgment may be lawfully given without the intervention of a jury, or by the judgment of a court, a jury having been waived, upon a criminal charge not amounting to a felony.

CHAPTER 2.

COURTS HAVING JURISDICTION IN CRIMINAL ACTIONS.

§ 7753. **Jurisdiction of district court.** There is in each of the judicial districts of this state a court denominated the district court, with jurisdiction conferred by the constitution of this state and the laws passed in pursuance thereof, and having, among other things, common law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state, affecting persons or property. § 15, C. Cr. P. am'd.

§ 7754. **Where district courts held.** Each of the said district courts may be held, for the trial of criminal actions, in any organized county or in any judicial subdivision in the same district, as is or may be provided by law. § 16, C. Cr. P. am'd.

§ 7755. **Always open. Questions of fact. Terms.** The said district courts are always open for the purpose of hearing and determining all questions, motions and applications of every kind and character in criminal actions or proceedings of which they have original or appellate jurisdiction, except issues of fact; and said questions, motions and applications may be heard and determined at any place within the judicial district in which is situated the county or judicial subdivision wherein the action or proceeding is brought or is pending. But issues of fact in all criminal actions or proceedings must be tried at a regular term of the court in the county or judicial subdivision in which the same is legally brought or to which the place of trial is changed as provided by law.

§ 7756. **Jurisdiction of district courts specified.** Each of the said district courts has and must exercise jurisdiction and authority: § 17, C. Cr. P. am'd.

1. To inquire, by the intervention of a grand jury when required by law, of all public offenses committed or triable in the county or judicial subdivision for which the court may be held.

2. To inquire into the cause of the detention of all persons imprisoned in the jail of the county or judicial subdivision, or otherwise detained, and to make an order for their recommitment or discharge, or other disposition, according to law.

3. To hear, try and determine as limited by law, all accusations in writing presented by a grand jury, or otherwise as provided and for the causes specified in section 7824 of this code, against any district, county, township, city or municipal officer or state officer not liable to impeachment, for misconduct, malfeasance, crime or misdemeanor in office or for habitual drunkenness or gross incompetency and upon conviction to enter judgment as prescribed by law.

4. To hear, try and determine, upon information or indictment or otherwise as provided by law, prosecutions for crimes or public offenses committed against the laws of this state, and to issue writs and process and do all other acts therein according to law as may be necessary in the exercise of said jurisdiction and authority, whether original or appellate, and upon conviction of any such crime or public offense, to impose the punishment prescribed by law therefor.

§ 7757. **Decisions of district courts reviewable.** The final decisions of the district courts in criminal actions, are reviewable and § 18, C. Cr. P. am'd.

§ 19, C. Cr. P.
am'd.

determinable by the supreme court, according to law, on appeals bringing up for review the record and proceedings therein.

§ 7758. Jurisdiction. Justices. Magistrates. County courts. As limited by law directing the place of exercising their jurisdiction and authority, county, city, township and other justices of the peace, police magistrates and, when authorized by law, the judges of the county courts and the county courts shall have jurisdiction and authority throughout the counties or the judicial subdivisions in which the county, city, township or municipality for which they are respectively elected, are located:

1. To act as committing magistrates under the provisions of this code or other laws of this state conferring the same.

2. To hear, try and determine such petit misdemeanors as, by the constitution of this state and the justices' code or this code or other laws, jurisdiction is now or may hereafter be conferred upon them to punish.

3. To adjudge and impose the punishment prescribed by law, upon conviction, in all cases within their jurisdiction to hear, try and determine.

CHAPTER 3.

PREVENTION OF PUBLIC OFFENSES.

ARTICLE 1.—LAWFUL RESISTANCE.

§ 20, C. Cr. P.

§ 7759. To commission of offense. By whom. Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured.

2. By other parties.

§ 21, C. Cr. P.

§ 7760. By party about to be injured. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person or his family or some member thereof.

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

§ 22, C. Cr. P.

§ 7761. By other persons. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

ARTICLE 2.—INTERVENTION OF THE OFFICERS OF JUSTICE.

§ 23, C. Cr. P.

§ 7762. Public offenses prevented. Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.

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

3. By suppressing riots.

§ 24, C. Cr. P.

§ 7763. Persons aiding officers justified. When the officers of justice are authorized to act in the prevention of public offenses, other persons who, by their command act in their aid, are justified in so doing.

ARTICLE 3.—SECURITY TO KEEP THE PEACE.

§ 7764. **Complaint for threatening, before whom.** A complaint may be laid before any of the magistrates mentioned in section 7885, authorized by law to act within the county or judicial subdivision that a person has threatened to commit an offense against the person or property of another. § 25, C. Cr. P. am'd.

§ 7765. **Complaint defined.** A complaint within the meaning of this article, is a statement in writing, made to a magistrate, that a person has threatened to commit an offense against the person or property of another, and subscribed and sworn to by the complainant.

§ 7766. **Magistrate must issue warrant.** If it appears from such complaint that there is just reason to fear the commission of the offense threatened, by the person complained of, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, or marshal or policeman of the city or town, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before such magistrate. § 26, C. Cr. P. am'd.

§ 7767. **Procedure when charge controverted.** When the person complained of is brought before the magistrate, if the charge is controverted, the magistrate must take testimony in relation thereto. The evidence must on demand of the defendant, be reduced to writing and subscribed by the witnesses. § 27, C. Cr. P.

§ 7768. **When accused must be discharged.** If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged. § 28, C. Cr. P.

§ 7769. **When accused must give undertaking.** If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking, in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this state, and particularly toward the complainant. § 29, C. Cr. P.

§ 7770. **When undertaking is or is not given.** If the undertaking required by the last section is given the party complained of must be discharged. If he does not give it the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof and the omission to give the same. § 30, C. Cr. P.

§ 7771. **Accused committed. How discharged.** If the person complained of is committed for not giving security, he may upon giving the same, be discharged by any justice of the peace of the county or of the city or township, or by any police magistrate of the county, or by the judge of the county court of the county when authorized to act as a committing magistrate or by the judge of the district court of the county. § 31, C. Cr. P. am'd.

§ 7772. **Undertaking transmitted to district court.** The undertaking must be transmitted by the magistrate to the next district court of the county. § 32, C. Cr. P.

§ 7773. **Assault in presence of court.** A person who, in the presence of a court or magistrate, assaults or threatens to assault another or commit an offense against his person or property or who § 33, C. Cr. P.

contends with another with angry words, may be ordered by the court or magistrate to give security, as provided in section 7769, or if he refuses to do so he may be committed as provided in section 7770.

§ 34, C. Cr. P. § 7774. **Accused must appear at district court.** A person who has entered into an undertaking to keep the peace must appear on the first day of the next term of the district court of the county. If he does not the court may forfeit his undertaking and order it to be prosecuted unless his default is excused.

§ 35, C. Cr. P. § 7775. **Complainant not appearing, accused discharged.** If the complainant does not appear the person complained of may be discharged, unless good cause to the contrary is shown.

§ 36, C. Cr. P. § 7776. **Procedure when parties appear.** If both parties appear the court may hear their proofs and allegations, and may either discharge the undertaking or require a new one for a time not exceeding one year.

§ 37, C. Cr. P. § 7777. **When undertaking broken.** An undertaking to keep the peace is broken on the failure of a person complained of to appear at the district court as provided in section 7774 or upon his being convicted of a breach of the peace.

§ 38, C. Cr. P. § 7778. **Action upon undertaking.** Upon the state's attorney producing evidence of such conviction to the district court to which the undertaking is returned, that court must order the undertaking to be prosecuted, and the state's attorney must thereupon commence an action upon it in the name of this state.

§ 39, C. Cr. P. § 7779. **What alleged in action.** In the action the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

§ 40, C. Cr. P. § 7780. **Limitation.** Security to keep the peace or to be of good behavior cannot be required, except as prescribed in this article.

§ 1, c. 38, 1881. § 7781. **Costs to be taxed.** In all cases of security to keep the peace under this article, the court in addition to the orders mentioned in said article shall tax the costs against the complainant or defendant, or both, as justice may require, and enter judgment therefor, which may be enforced as judgments for costs in criminal cases, and execution may issue therefor.

ARTICLE 4.—POLICE IN CITIES AND VILLAGES, AND THEIR ATTENDANCE AT PUBLIC MEETINGS.

§ 41, C. Cr. P. § 7782. **Organization of police.** The organization and regulation of the police in the cities and villages of this state are governed by special statutes.

§ 42, C. Cr. P. § 7783. **Force to attend public meetings.** The mayor or other officer having the direction of the police in a city or village, must order a force sufficient to preserve the peace to attend any public meeting when he is satisfied that a breach of the peace is reasonably apprehended.

ARTICLE 5.—SUPPRESSION OF RIOTS.

§ 43, C. Cr. P. § 7784. **Officer may command assistance.** When a sheriff or other public officer authorized to execute process, finds or has reason to apprehend that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in

the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

§ 7785. Officer must report resisters. The officer must § 44. C. Cr. P.
certify to the court from which the process is issued, the names of the resisters and their aiders and abettors, to the end that they may be proceeded against for contempt.

§ 7786. Person commanded refusing, punished. Every § 45. C. Cr. P.
person commanded by a public officer to assist him in the execution of process, as provided in section 7784, who without lawful cause, refuses or neglects to obey the command, is guilty of a misdemeanor.

§ 7787. Governor may order additional force. If it § 46. C. Cr. P.
appears to the governor that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, or to suppress riots and to preserve the peace, he must on the application of the sheriff or the judge, order such a force from any other county or counties as is necessary, and all persons so ordered or summoned by the governor or acting governor, are required to attend and act; and any such persons who without lawful cause, refuse or neglect to obey the command, are guilty of a misdemeanor.

§ 7788. Governor may ask aid of the United States. § 47. C. Cr. P.
Under the facts and circumstances mentioned in the last section and when the civil power of the county is not deemed sufficient, it shall be the duty of the governor to apply to the military authorities of the United States for a force sufficient to execute the laws and to prevent resistance thereto, to suppress riots, execute process and preserve the peace.

§ 7789. Unlawful assemblage. When any number of per- § 48. C. Cr. P.
sons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the city or town, or the justices of the peace and marshals and constables and police thereof, or any of them, must go among the persons assembled or as near to them as possible, and command them in the name of the state immediately to disperse.

§ 7790. Procedure if rioters do not disperse. If the per- § 49. C. Cr. P.
sons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

§ 7791. Who deemed rioters. If a person so commanded to § 50. C. Cr. P.
aid the magistrates and officers neglects to do so, he is deemed one of the rioters, and is punishable accordingly.

§ 7792. Negligence of officers is a misdemeanor. If a § 51. C. Cr. P.
magistrate or officer having notice of an unlawful or riotous assembly mentioned in section 7789, neglects to proceed to the place of the assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

§ 7793. When officers may disperse assembly. If the § 52. C. Cr. P.
persons assembled and commanded to disperse do not immediately disperse, any two of the magistrates or officers mentioned in section 7789, may command the aid of a sufficient number of persons, and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

§ 53, C. Cr. P. **§ 7794. Endeavors before endangering life.** Every endeavor must be used, both by the magistrates and civil officers and by the officer commanding the troops, which can be made consistently with the preservation of life, to induce or force the rioters to disperse before an attack is made upon them by which their lives may be endangered.

§ 54, C. Cr. P. **§ 7795. Penalty for resisting.** A person who after the publication of a proclamation by the governor or acting governor, or who after lawful notice as aforesaid to disperse and retire, resists or aids in resisting the execution of process in a county declared to be in a state of riot or insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists or aids in resisting a force ordered out by the governor or any civil officer as aforesaid, to quell or suppress an insurrection or riot, is guilty of a felony, and is punishable by imprisonment in the penitentiary for not less than two years.

CHAPTER 4.

PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS.

ARTICLE 1. — REMOVAL BY IMPEACHMENT.

§ 7796. Impeachments. What officers liable to and for what. The governor and other state and judicial officers of the state, except county judges, justices of the peace and police magistrates, shall be liable to and may be impeached for habitual drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office. The articles of impeachment may contain charges and specifications, or either, predicated upon or on account of any crime, corrupt conduct, malfeasance or misdemeanor in office committed by the accused during any previous term of the same office.

§ 7797. Commencement. Trial. Presiding officer. The sole power of impeachment is vested in the house of representatives and a concurrence of a majority of all the members is necessary to the exercise thereof. All impeachments shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation, to do justice according to law and the evidence. When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside, or in case he is disqualified or unable to preside, then some other judge of said court to be selected by the senate. No person shall be convicted without the concurrence of two-thirds of the senators elected.

§ 7798. How originated. Prosecution. Articles. Every impeachment must be originated by resolution adopted by the house of representatives, and the prosecution thereof conducted by at least five managers selected therefor by the house. Said managers, or a committee of the house, must prepare the articles of impeachment in accordance with the resolution of the house and submit them to the

house for approval, and when approved the managers must present the same at the bar of the senate and immediately deliver them to the presiding officer thereof. The house may authorize the managers to employ counsel to assist them in the preparation and prosecution of the articles of impeachment.

§ 7799. Form of articles and specifications. The articles of impeachment shall be divided into separate charges and specifications thereunder. The charges shall be numbered consecutively by themselves and each shall set forth in a general way the facts claimed to constitute one of the offenses named in section 7796 of this code. The specifications under each charge shall immediately follow it and be consecutively numbered, and each shall set forth the facts claimed to constitute an offense of the kind named in the charge under which it is placed. There may be as many charges and as many specifications under each as the circumstances may require. No objection shall be made on account of the form of the articles of impeachment, and the same shall be deemed sufficient in substance if their allegations enable the accused to understand the nature of the accusations against him, and to make his defense.

§ 7800. Day for hearing. Notice to accused. The senate must whenever articles of impeachment are presented to it by or on behalf of the house of representatives, assign a day for the hearing of the impeachment and inform such house thereof. The day so assigned shall not be earlier in the session than that at which the completion of the business of the legislative assembly may be effected. But all steps and preparations necessary may be taken and made from time to time during the session to enable the trial to begin immediately upon the completion of the business of the legislative assembly. The president of the senate or other person presiding therein, must cause a copy of the articles of impeachment with a notice to answer the same, at the time and place appointed, to be served upon the accused not less than twenty days before the day set for the trial.

§ 7801. Service of notice. The service must be made upon the accused personally, or if he cannot upon diligent inquiry be found within the state, the senate upon proof of that fact may order the notice to be served by publication or otherwise in such manner as it may deem proper; and the notice as published must require the accused to appear at the specified time and place to answer the articles of impeachment. When the notice to the accused is served by publication or otherwise than personally within the state, the articles of impeachment may be served upon the accused by mail or otherwise as the senate may deem proper.

§ 7802. Procedure after notice. If the accused does not appear the senate upon proof of service of the notice and articles of impeachment in any manner provided in the last two sections, as the circumstances may require, may, of its own motion or for cause shown, assign another day for the hearing of the accused, or may proceed in the absence of the accused to trial and judgment.

§ 7803. Impeachment suspends officer. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal. Whenever upon the impeachment of an officer there is no one authorized by law to perform the duties of the office, and the senate shall by resolution declare that the public service may suffer by reason thereof, the governor shall designate some suitable person to perform the duties of the office until the end

of the trial upon the articles of impeachment, and the person so designated shall receive the same salary, fees and emoluments as such officer during his incumbency. If the accused is acquitted, he shall thereby, be immediately restored to the office, but if he is convicted, the office shall be deemed vacant and be immediately filled as provided by law.

§ 7804. Organization of court. Powers. It shall be the duty of the senate and each member thereof, unless excused for cause, to meet at the senate chamber on the day assigned to hear the impeachment and organize as a court for the trial of the same, and such organization shall be held and deemed to be perfected when the presiding officer of the senate and all members thereof, not excused, shall have taken the oath or affirmation prescribed. No member shall sit in the trial, or give his vote upon such trial, until he shall have taken such oath or affirmation. The oath or affirmation, shall be administered by the secretary of the senate to the presiding officer thereof, and by the presiding officer, to each of the members of the senate. The senate sitting as a court upon the trial of an impeachment shall have the same power to compel the attendance of its members as when engaged in the ordinary business of legislation.

§ 7805. Counsel for accused. If the accused appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate, or other person presiding, to appoint some suitable person to assist him in his defense. If he is served by publication and fails to appear, it is the duty of the president of the senate, or other person presiding, to appoint some person as counsel to appear in his behalf and make defense for him.

§ 7806. How accused may answer. When the defendant appears he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty. Such plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment and the specifications thereunder; or the accused may answer the articles in writing.

§ 7807. Objections to the articles. Procedure. If the accused makes objections to the sufficiency of the articles of impeachment and such objections are sustained by a majority of the members of the senate, the decision shall be entered on the journal and no further proceedings be had upon the articles, but if such objections are not sustained by a majority of the members of the senate, the accused must be ordered forthwith to answer the articles.

§ 7808. Objections overruled. Further proceedings. If the accused upon the overruling of his objections as provided in the last section, then pleads guilty to any or all of the charges or specifications, the senate must render judgment of conviction against him, but if he pleads not guilty or refuses to plead, the senate must at such time as it may appoint proceed to try the impeachment.

§ 7809. Duty of secretary of senate. It shall be the duty of the secretary of the senate in all cases of impeachment to keep a full and correct record of all proceedings and said record shall be held and become a public record. The secretary of the senate shall also have power to administer all requisite oaths and affirmations.

§ 7810. Subordinate officers of the court. The senate sitting as a court of impeachment shall have power, from time to time, to appoint such subordinate officers, clerks and reporters as may be

necessary for the convenient transaction and dispatch of business, and may at any time remove such officers or any of them.

§ 7811. **Process for witnesses.** The managers selected by the house of representatives and the person impeached and his counsel, shall, severally, be entitled to process for compelling the attendance of persons and witnesses, or the production of papers or records required for the trial of the impeachment.

§ 7812. **Senate may make rules. Subpoenas.** The senate sitting as a court of impeachment shall have full power and authority to establish such rules and regulations for the trial of the accused as may be necessary, and shall have power to adjourn from time to time and dissolve when its work is concluded, and to compel obedience to its process and orders. Its process including subpoenas shall run into every part of the state and may be served by the same officers as other process, or by any person authorized by the presiding officer of the court to serve the same, and shall have the same force and effect as subpoenas from district courts in criminal actions.

§ 7813. **Privileges of court. Imprisonment.** The senate, while sitting as a court of impeachment shall have all the powers and privileges conferred upon it by the constitution as a house of the legislative assembly or the laws passed in pursuance thereto, provided imprisonment shall not extend beyond the dissolution of the court of impeachment.

§ 7814. **Vote on charge. Conviction.** The vote upon the charges and specifications shall be taken by yeas and nays, beginning with the first specification under the first charge and continuing until all the specifications under the first charge have been disposed of. A vote shall be taken in the same way upon each specification and all specifications and other charges in the articles of impeachment until they are all disposed of. If two-thirds of the members elected concur in favor of a conviction upon any of the charges or specifications the accused must be convicted, otherwise he shall be acquitted.

§ 7815. **Upon conviction, judgment entered by resolution.** If the accused is convicted the senate must, at such time as it may appoint, pronounce judgment in the form of a resolution entered upon the journal of the senate.

§ 7816. **Adoption of resolution.** On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

§ 7817. **Extent of judgment of conviction.** The judgment may be that the defendant be removed from office, or that he be removed from office and disqualified to hold any office of trust or profit in the state.

§ 7818. **Effect of such judgment.** If a judgment of conviction is given, the defendant shall be disqualified from exercising any of the functions of the office, and from receiving the salary, fees or emoluments thereof, and the office shall be filled for the remainder of the term as upon a vacancy.

§ 7819. **Lieutenant governor impeached.** If the lieutenant governor is impeached, notice of the impeachment must be immediately given to the senate by the house of representatives, that another president may be chosen.

§ 7820. **Impeachment does not bar prosecution.** If the offense for which the defendant is impeached or convicted is also the

subject of an information or indictment, the information or indictment is not barred thereby.

§ 7821. Compensation. Members. Counsel. Payment. The presiding officer, except the chief justice when presiding, and members of the senate while sitting as a court of impeachment, and of the house of representatives, shall each receive their regular per diem and mileage while attending the court of impeachment, and the compensation of the secretary of the senate, sergeant-at-arms and all subordinate officers, clerks and reporters of the court and counsel employed to assist the managers, shall be such amount as shall be determined upon by a vote of the members of such court. The state auditor upon presentation of a certificate or certificates signed by the presiding officer and secretary of the senate, shall draw his warrants upon the state treasurer to pay the expense of the senate, and the compensation of the officers, clerks and reporters and counsel under the provisions of this article.

§ 7822. Compensation. Officers. Witnesses. Payment. The same fees shall be allowed to witnesses, officers and other persons serving process or orders as are allowed for like services in criminal actions, but no fees can be demanded in advance. Such fees shall be certified and paid as provided in the preceding section for the payment of the senate, officers, clerks, reporters and counsel, but subject to the right of the senate to disallow all fees and charges which it shall deem unreasonable or unnecessary.

ARTICLE 2.—REMOVAL BY JUDICIAL PROCEEDINGS.

§ 55, C. Cr. P.

§ 7823. Additional proceedings. Removal from office. In addition to the proceedings mentioned in chapter 24 of the code of civil procedure and article 2, chapter 6 of the political code, and apart and distinct from any other criminal action or proceedings, the following provisions are adopted to obtain a judgment of removal from office.

§§ 56, 67,
C. Cr. P.
am'd.

§ 7824. Accusation. Causes for removal. An accusation in writing against any district, county, township, city or municipal officer, or state officer not liable to impeachment, except representative in congress and members of the legislative assembly, for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed; provided, that when such proceedings are against a state officer not liable to impeachment, the accusation may be presented by the grand jury of the county or judicial subdivision in which such officer resides or in which he has his place of office for the transaction of his official business.

§ 57, C. Cr. P.

§ 7825. Form of accusation. The accusation must state the offense charged in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

§ 58, C. Cr. P.

§ 7826. Duty of judge. State's attorney. After receiving the accusation the judge to whom it is delivered must forthwith cause it to be transmitted to the state's attorney of the county or subdivision, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require by written notice of not less than five days that he appear before the district court of

the county or subdivision, and answer the accusation at a specified time. The original accusation must then be filed with the clerk of the court.

§ 7827. Defendant must appear. The defendant must appear at the time appointed in the notice and answer the accusation, unless for sufficient cause, the court assigns another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence. § 59, C. Cr. P.

§ 7828. Defendant's answer. The defendant may answer the accusation either by objecting to the sufficiency thereof or of any article therein, or by denying the truth of the same. § 60, C. Cr. P.

§ 7829. Objections for insufficiency. If he objects to the legal sufficiency of the accusation, the objection must be in writing but need not be in any specific form, it being sufficient if it presents intelligibly the ground of the objection. § 61, C. Cr. P.

§ 7830. Denial may be oral. If he denies the truth of the accusation, the denial may be oral and without oath and must be entered upon the minutes. § 62, C. Cr. P.

§ 7831. Objections overruled. Answer. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer the accusation forthwith. § 63, C. Cr. P.

§ 7832. Conviction on plea or trial. If the defendant pleads guilty the court must render judgment of conviction against him. If he denies the matters charged or refuses to answer the accusation, the court must immediately or at such time as it may appoint proceed to try the accusation. § 64, C. Cr. P. am'd.

§ 7833. Trial by jury. The trial must be by a jury and conducted in all respects in the same manner as the trial of an information or indictment for a misdemeanor. § 65, C. Cr. P.

§ 7834. Judgment on conviction. Upon a conviction the court must pronounce judgment that the defendant be removed from office. But to warrant a removal the judgment must be entered upon the minutes, assigning therein the causes of removal. § 66, C. Cr. P.

§ 7835. Process for witnesses. The state's attorney or other person appointed to prosecute and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an information or indictment.

§ 7836. Appeal from judgment of removal. From a judgment of removal an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action; but until such judgment is reversed the defendant is suspended from his office, and pending the appeal the office must be filled as in case of vacancy.

§ 7837. Proceedings to remove state's attorney. The same proceedings may be had on like grounds for the removal of a state's attorney, except that the accusation must be delivered by the judge to the clerk, and by him to such person as may be appointed by the judge to act as prosecuting officer in the matter, who is authorized and required to conduct the proceedings. § 69, C. Cr. P. am'd.

§ 7838. Other accusation and proceedings thereon. When an accusation in writing and verified by the oath of any person is presented to the district court, alleging that an officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered or to be rendered in his office, or has refused or neglected to perform the official duties pertaining to his office, or has rendered himself incompetent to perform his said duties § 70, C. Cr. P. am'd.

by reason of habitual drunkenness or other cause, the judge of the court to whom it is delivered must forthwith cause it to be transmitted to the state's attorney of the county, or in case it is against the state's attorney of the county, the accusation must be delivered by the judge to the clerk of the court and by him to such person as may be appointed by the judge to act as prosecuting officer in the matter, and the state's attorney of the county or person appointed to prosecute, must cause a copy of said accusation to be served upon the accused and, by written notice, require him to appear before the court at a time specified, not more than twenty days nor less than five days from the time the accusation was presented, and answer said accusation. On the day named in said notice, or on some subsequent day not more than thirty days from that on which the accusation was presented, to be fixed by the judge, the court must proceed to hear the accusation and evidence offered in support of the same and the answer, if any is made, and the evidence offered by the party accused. The court may try and determine the issues unless the accused requires that they be submitted to a jury. If a jury is required the court must forthwith in a summary manner cause a jury to be impaneled and the matter submitted to them. Challenges shall be allowed and the trial conducted in the same manner as a trial by jury in a civil action. If the charge is tried by the court it shall proceed as a civil action tried by the court. The decision of the court or the verdict of the jury shall be "guilty," or "not guilty." Costs shall be awarded as in a civil action. If the accused is found guilty either by the decision of the court or by the verdict of the jury, the court shall render judgment that the accused be removed from his office, and for the costs of the action. A statement of the case may be settled and an appeal taken as provided by law in a civil action. The court may, in its discretion, if the accused is found guilty, award treble costs against him. If the court finds that the accusation was made without probable cause, it must tax the costs of the prosecution and trial against the complainant.

CHAPTER 5.

BASTARDY PROCEEDINGS.

§ 7839. Complaint for bastardy. Form. Any unmarried woman who is delivered of a bastard child, or is pregnant with a child, which, if born alive, may be a bastard, may make a complaint in writing under oath before a justice of the peace or police magistrate against the person who is the father of such child. Such proceedings must be entitled in the name of the state as plaintiff and against the accused as defendant. The complaint shall be in substantially the following form:

State of North Dakota, } ss. Before.....J. P.
 County of..... } (or Police Magistrate.)
 The State of North Dakota, Plaintiff,
 against

....., Defendant.

.....being first duly sworn on oath
 says: That she is an unmarried woman and was on the.....day of

.....18...delivered of a bastard child (or is pregnant with a child which, if born alive, may be a bastard), begotten by the defendant.....on or about the.....day of.....
18...at.....

Wherefore she asks that a warrant may be issued for the arrest of the defendant.....that he may answer to such charge.

Subscribed and sworn to, etc.

§ 7840. Warrant issued. Form. Service. Upon the filing of the complaint the magistrate shall issue a warrant which, exclusive of the venue and title, shall be in substantially the following form:

The state of North Dakota to any sheriff, constable, marshal or policeman in the county of

Complaint on oath having been made to me by that she is an unmarried woman and has been delivered of a bastard child (or is pregnant with a child which, if born alive, may be a bastard), and accusing the defendant with being the father of such child.

You are therefore commanded forthwith to arrest the above named and, unless he gives an undertaking in the sum of dollars, to be approved by the clerk of the district court of the county where arrested, to bring him before me at or in case of my absence or inability to act before the nearest or most accessible magistrate authorized to act in this county.

Dated at this day of 18....

Justice of the Peace (or Police Magistrate).

The officer to whom such warrant is delivered may execute the same in any part of this state by arresting the defendant and taking him before a magistrate as in such warrant directed. The undertaking required by the warrant shall be conditioned for the defendant's appearance as prescribed in section 7842.

§ 7841. How defendant released. If the defendant shall at any time after his arrest pay or secure to be paid to the complainant such sum of money as she may agree in writing to receive in full satisfaction and as shall be approved by the board of county commissioners of the county in which she resides and shall execute and give an undertaking with sufficient sureties to be approved by such board to the county in which she resides, conditioned to secure and indemnify such county from all charges for the maintenance of such child and shall also pay all expenses incurred by such county for the support of the mother during her lying in or of the child and the costs of prosecution, he shall be discharged.

§ 7842. Undertaking. Amount. Commitment. Upon the arrest of the defendant, unless he complies with the provisions of the last section or gives an undertaking as provided in section 7840, the magistrate before whom the defendant is taken shall require him to execute and give an undertaking in a sum not less than five hundred and not exceeding one thousand dollars, with sufficient sureties, payable to the state of North Dakota and conditioned that he will appear at the next term of the district court of such county and from term to term until the final disposition of the proceeding to answer the com-

plaint and abide the judgment and orders of the court therein; if the defendant fails to execute and give such undertaking the magistrate shall make an order committing him as in criminal actions.

§ 7843. How warrant returned. Undertaking. The warrant when executed together with any undertaking given by the defendant shall be returned by the officer making the arrest to the magistrate who issued the warrant, or his successor in office and the magistrate shall transmit any undertaking given by the defendant together with a transcript of his proceedings and all other papers in the case, without delay, to the clerk of the district court of the proper county.

§ 7844. Undertaking after commitment. Any person imprisoned for failure to give such undertaking may be discharged by giving the same with sufficient sureties at any time after his commitment; such undertaking may be taken and approved by the magistrate before whom such proceeding was had or by the judge of the district court before whom the same is pending.

§ 7845. Proceedings for trial. The trial of such proceeding shall, except as herein otherwise provided, be governed by the law regulating civil actions. The clerk shall place such proceeding upon the calendar for trial at the first term of the district court after the papers therein are received by him. No notice of trial and note of issue need be served or filed.

§ 7846. Answer. Trial. By court. By jury. If the defendant answers, denying the charge, the issue shall be tried by the court, unless a jury is demanded by either party, in which case the issue shall be tried by a jury.

§ 7847. Defendant adjudged father. Judgment. If the court or jury finds that the defendant is the father of such child, or if the defendant fails to answer the charge, he shall be adjudged the father of such child and the court shall render such judgment as may seem necessary to secure, with the assistance of the mother, the maintenance and education of such child, until such time as the child is likely to be able to support itself, which judgment shall be docketed by the clerk as judgments in civil actions. Such judgment shall direct the person to whom and the times at which any parts of the same shall be paid and shall also require the defendant to secure the payment thereof by an undertaking executed by him with sufficient sureties and in default thereof the defendant shall be committed to jail until discharged according to law. The court may at any time upon the motion of either party, upon ten days' notice to the other party, vacate or modify such judgment as justice may require.

§ 7848. Imprisoned ninety days. Discharge. Any person who shall have been so imprisoned ninety days may apply for his discharge from imprisonment in the manner provided in the code of civil procedure for the discharge from imprisonment of persons confined in jail upon executions against the person.

§ 7849. Execution may issue. Exemptions. Executions may issue on such judgment whenever any amount is due on the same and shall be executed as an execution on a judgment in a civil action, and no property, except absolute exemptions, shall be exempt from such execution.

§ 7850. Woman failing to prosecute. County commissioners. If any woman mentioned in section 7839 fails to prosecute the father of her child and such child is likely to become a public

charge, any member of the board of county commissioners of the county where she resides may apply to a justice of the peace or police magistrate of such county, who shall thereupon examine her under oath as to who is the father of such child, the time when and place where such child was begotten and as to such other circumstances as are deemed necessary; the magistrate shall thereupon issue a warrant for the arrest of the person charged with being the father of the child and the same proceedings shall be had thereon and with like effect as in cases of complaint made by the woman.

§ 7851. Prosecution limited. No proceedings under this chapter shall be instituted unless commenced within one year after the birth of such child, but no time during which the defendant is not an inhabitant of or usually residing within this state is a part of the time limited for the commencement of such proceeding.

§ 7852. Other provisions applicable. The provisions of articles 8 and 9 of chapter 10 of the code of civil procedure relating to exceptions and new trials, and the provisions of chapter 14 of such code relating to appeals are applicable to proceedings under this chapter.

§ 7853. State's attorneys must prosecute. The several state's attorneys within their respective counties shall prosecute all proceedings under this chapter.

§ 7854. Action on undertaking. If the defendant fails to appear in accordance with the terms of the undertaking provided for in section 7842 the state's attorney of the county shall commence an action thereon in the name of the state for the recovery of the full amount specified in such undertaking, which amount is declared to be liquidated damages. The judgment in such action shall direct the payment of such money as provided in section 7847, so far as the same is applicable and the court may also direct the clerk to issue a bench warrant for the arrest of the defendant and the provisions of sections 8066 and 8067 of this code, so far as the same are applicable, shall govern the proceedings under such warrant.

§ 7855. Proceedings on undertaking. If at any time after having given the undertaking provided for in section 7847, the defendant shall be in default in the payment of any sum provided for in the judgment, the court may upon motion of the state's attorney, upon ten days' notice to the defendant and his sureties enter up judgment on such undertaking and award execution for the amount of money due upon such judgment at the time such motion is heard.

§ 7856. Deposit instead of undertaking. The defendant instead of giving any undertaking required under the provisions of this chapter may deposit with the clerk of the district court of the county in which such proceeding is commenced, a sum of money equal to the amount for which such undertaking is required to be given. Such deposit shall be held to answer the event of such proceeding to the same extent and upon the same conditions as the undertaking in lieu of which such deposit is made.

CHAPTER 6.

PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED
BY INFORMATION OR INDICTMENT, TO THE
COMMITMENT INCLUSIVE.

ARTICLE 1.—LOCAL JURISDICTION OF PUBLIC OFFENSES.

- § 71, C. Cr. P.
am'd. **§ 7857. Who punishable in this state.** Every person is liable to punishment by the laws of this state, for a crime or public offense committed by him therein, or as otherwise prescribed by the penal code, except when it is by law cognizable exclusively in the courts of the United States.
- § 72, C. Cr. P. **§ 7858. Commenced without, consummated within.** When the commission of a public offense commenced without this state is consummated within its boundaries, the defendant is liable to punishment therefor in this state, though he was out of the state at the time of the commission of the offense charged, if he consummated it in this state through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and in such case, the jurisdiction is in the county or judicial subdivision in which the offense is consummated.
- § 73, C. Cr. P.
am'd. **§ 7859. Duel without, death within state.** When an inhabitant or resident of this state, by previous appointment or engagement fights a duel, or is concerned as a second or surgeon therein, out of the jurisdiction of this state, and in the duel a wound is inflicted upon a person, whereof he dies in this state, the jurisdiction of the offense is in the county or judicial subdivision where the death happens.
- § 74, C. Cr. P.
am'd. **§ 7860. Inhabitant leaving to evade law.** When an inhabitant or resident of this state leaves the same for the purpose of evading the operation of the provisions of the statutes relating to dueling, and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county or judicial subdivision of which the offender was an inhabitant or resident when the offense was committed.
- § 75, C. Cr. P.
am'd. **§ 7861. Part committed in different counties.** When a crime or public offense is committed in part in one county or judicial subdivision and in part in another, or the acts or effects thereof, constituting or requisite to the consummation of the offense occur in two or more counties or judicial subdivisions, the jurisdiction is in either or any of said counties or judicial subdivisions.
- § 76, C. Cr. P.
am'd. **§ 7862. Committed near boundary.** When a public offense is committed on the boundary of two or more counties or judicial subdivisions, or within five hundred yards thereof, the jurisdiction is in either county or judicial subdivision.
- § 77, C. Cr. P.
am'd. **§ 7863. On board vessel.** When an offense is committed in this state on board a vessel navigating a river, lake or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county or judicial subdivision through which the vessel is navigated in the course of her voyage, or in the county or judicial subdivision where the voyage terminates.

§ 7864. Certain enumerated cases. The jurisdiction of a criminal action: § 78, C. Cr. P.
am'd.

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnaping him, with intent, against his will, to cause him secretly or forcibly to be confined or imprisoned in this state, or to be sent out of this state or from one county to another; or,

2. For maliciously, forcibly or fraudulently taking or enticing away a child under the age of twelve years, with intent to detain and conceal such child from its parents, guardian or other person having lawful charge of the child; or,

3. For inveigling, enticing or taking away any unmarried female of previous chaste character, under the age of twenty years, for the purpose of prostitution, or for aiding or assisting in such abduction, for such purpose; or,

4. For taking away any female under the age of eighteen years, from her father, mother, guardian or other person having the legal charge of her person, without his consent, either for the purpose of concubinage or prostitution;

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

§ 7865. Proceedings in certain cases. When property taken in one county or judicial subdivision, by burglary, robbery, larceny or embezzlement, has been brought into another, the jurisdiction of the offense is in either. But if before the conviction of the defendant in the latter, he is indicted in the former county or judicial subdivision, the sheriff of the latter must, upon demand, deliver him to the sheriff of the county or judicial subdivision where the indictment was found, upon being served with a certified copy of the indictment and a receipt indorsed thereon, of the delivery of the body of the defendant, and is, on filing the copy of the indictment and the receipt, exonerated from all liability in respect to the custody of the defendant. The sheriff having the custody of the accused shall not surrender him except upon an indictment by a grand jury. § 80, C. Cr. P.
am'd.

§ 7866. Treason. Overt act without state. The jurisdiction of a criminal action for treason, when the overt act is committed out of this state, is in any county or judicial subdivision of the state.

§ 7867. Jurisdiction of accessory. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county or judicial subdivision where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county or judicial subdivision. § 81, C. Cr. P.
am'd.

§ 7868. Conviction or acquittal in another state. When an act charged as a public offense is within the jurisdiction of another state, country or territory as well as in this state, a conviction or acquittal thereof in the former is a bar to a prosecution or indictment therefor in this state. § 82, C. Cr. P.
am'd.

§ 7869. Conviction or acquittal in another county. When an offense is in the jurisdiction of two or more counties, a conviction § 83, C. Cr. P.

or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

§ 84, C. Cr. P.
am'd.

§ 7870. Escaping from penitentiary. The jurisdiction of a criminal action for escaping from or breaking the penitentiary, with intent to escape therefrom, or for attempting by force or violence or in any other manner to escape from said prison, is in the county where the same is located.

§ 84, C. Cr. P.
am'd.

§ 7871. Escaping from jail. The jurisdiction of a criminal action for breaking or escaping from the jail of any county is in the county where said jail is located.

§ 85, C. Cr. P.
am'd.

§ 7872. Bringing stolen property into state. The jurisdiction of a criminal action for stealing in any state, country or territory, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this state, is in any county or judicial subdivision into which such stolen property has been brought.

§ 86, C. Cr. P.
am'd.

§ 7873. Murder or manslaughter. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county or judicial subdivision and the party injured dies in another or out of the state, is in the county or judicial subdivision where the injury was inflicted.

§ 87, C. Cr. P.
am'd.

§ 7874. Against a principal not present. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission thereof, is in the same county or judicial subdivision in which it would be under this code, if he was so present and aiding and abetting therein.

§ 7875. Violating enumerated sections. The jurisdiction of a criminal action for the violation of any of the provisions of sections 7348, 7349 and 7350 of the penal code is in any county or judicial subdivision, either:

1. In which any act is done toward the commission of the offense; or,
2. Into, out of or through which the offender passed to commit the offense; or,
3. Where the offender is arrested.

ARTICLE 2.—TIME OF COMMENCING CRIMINAL ACTIONS.

§ 88, C. Cr. P.
am'd.

§ 7876. For murder not limited. There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

§ 89, C. Cr. P.
am'd.

§ 7877. For felony other than murder. An information for any other felony than murder must be filed, or an indictment found, within three years after its commission; provided, that nothing in this section contained shall be construed to bar or prevent a person prosecuted for murder from being found guilty of manslaughter and punished accordingly.

§ 7878. For misdemeanor. An information, or a complaint, for a misdemeanor, except as otherwise specially limited by law, must be filed, or an indictment found, within two years after its commission.

§ 90, C. Cr. P.
am'd.

§ 7879. Time of defendant's absence. If when the crime or public offense is committed, the defendant is out of the state, the information may be filed, or the indictment found, within the time herein limited, after his coming within the state, and no time during

which the defendant is not an inhabitant of, or usually resident within this state, is part of the limitation.

§ 7880. When action is commenced. An information is filed or an indictment found within the meaning of this article when it is presented, if an information by the state's attorney or person appointed to prosecute, or if an indictment, by the grand jury, in open court and there received and filed; or if a complaint, when filed by a magistrate having jurisdiction to hear, try and determine the action. § 91, C. Cr. P. am'd.

ARTICLE 3.—THE COMPLAINT, INFORMATION OR INDICTMENT AND MAGISTRATES.

§ 7881. Complaint defined. A complaint is a statement in writing made to a magistrate that a person has been guilty of some designated crime or public offense, and subscribed and sworn to by the complainant.

§ 7882. Indictment defined. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a crime or public offense. § 186, C. Cr. P. am'd.

§ 7883. Information defined. An information is an accusation in writing, in form and substance like an indictment for the same offense, charging a person with a crime or public offense, signed and verified by some person and presented to a police magistrate, or to the district court, and filed by said police magistrate, if presented to him, or if presented to the district court, then in the office of the clerk of said court.

§ 7884. Magistrates defined. A magistrate is an officer authorized by law, to issue a warrant for the arrest of a person charged with a crime or public offense. § 93, C. Cr. P. am'd.

§ 7885. Who are magistrates. The following officers are magistrates: § 94, C. Cr. P. am'd.

1. The judges of the supreme court, with authority to act as such throughout the state.
2. The judges of the district courts, with authority to act as such throughout the judicial districts for which they are respectively elected.
3. As limited by law directing the place of exercising their jurisdiction and authority, county, city, township and other justices of the peace, police magistrates and, when authorized by law, the judges of the county courts, with authority to act as such throughout the counties or the judicial subdivisions in which the county, city, township or municipality for which they are respectively elected are located.

ARTICLE 4.—THE COMPLAINT.

§ 7886. What complaint must state. The complaint must state:

1. The name of the person accused, if known, or if not known and it is so stated, he may be designated by any other name.
2. The county or judicial subdivision in which the offense was committed.
3. The general name of the crime or public offense.
4. The acts or omissions complained of as constituting the crime or public offense named.

5. The person against whom, or against whose property the offense was committed, if known, and,

6. If the offense is against the property of any person, a general description of such property. The complaint must be subscribed and sworn to by the complainant.

§ 7887. Who must make complaint. Every person who has reason to believe that a crime or public offense has been committed, must make complaint against such person before some magistrate having authority to make inquiry of the same.

§ 7888. Magistrate may examine complainant. When a complaint is made before a magistrate, charging a person with the commission of a crime or public offense, such magistrate may examine the complainant, under oath, as to his knowledge of the commission of the offense charged, and he may also examine any other persons.

§ 7889. Accused arrested without warrant. When any officer or other person shall bring any person he has arrested without a warrant, before a magistrate, it is the duty of such officer or person to specify the charge upon which he has made the arrest. It is then the duty of the magistrate or state's attorney to make a complaint of the offense charged, and cause the officer or person, or some other person, to subscribe and make oath to such complaint and file it.

§ 7890. Witnesses other than complainant. Every person making complaint charging the commission of a crime or public offense, must inform the magistrate of all persons, whom he believes to have any knowledge of its commission and the magistrate, at the time of issuing the warrant, may issue subpoenas for such persons, requiring them to attend at a specified time and place as witnesses.

ARTICLE 5. — THE WARRANT OF ARREST.

§ 95, C. Cr. P.
am'd.

§ 7891. Issuance of warrant. Justices of the peace.

When a complaint, verified by oath or affirmation, is laid before a magistrate, charging the commission of a crime or public offense, he must, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the accused committed it, issue a warrant for his arrest; but when the magistrate before whom the complaint is made is a justice of the peace, before issuing the warrant, the complaint, if made by any person other than the state's attorney of the county, and other evidence taken by such magistrate relating to the offense charged, must be submitted to such state's attorney and he must examine into the charge and enter either his approval or disapproval of the issuance of a warrant upon such complaint. If the state's attorney disapproves, no warrant shall be issued, but if he approves the issuance of a warrant such magistrate shall proceed accordingly: provided, however, that in cases when it appears from statements of the complaint or other written evidence submitted to the magistrate that the accused is liable to escape from the county before the approval of the state's attorney can be had as hereinbefore prescribed and such magistrate so certifies on the complaint, and in all cases mentioned in section 7889 of this code, a warrant may issue without the approval of the state's attorney. No justice of the peace shall receive any fees or allowances whatever for any act done or services rendered in a criminal action or proceeding commenced or prosecuted in disregard of the provisions of this section.

§ 7892. **Warrant defined. Form.** A warrant of arrest is an order in writing, in the name of the state, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form: § 96, C. Cr. P. am'd.

State of North Dakota, }
County of..... } ss.

The state of North Dakota to any sheriff, constable, marshal or policeman in this state (or in the county of....., or as the case may be:)

Complaint upon oath having been this day laid before me that the crime of (designating it) has been committed, and accusing C. D. thereof;

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

Dated at....., this.....day of, 18....

E. F., Justice of the Peace,
(or as the case may be.)

§ 7893. **Requisites of warrant.** The warrant must specify the name of the defendant, or if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant, and the time of issuing it, and the county, city, town or village where it is issued, and be signed by the magistrate with his name of office. § 97, C. Cr. P.

§ 7894. **Directed to peace officer. Execution.** The warrant must be directed to and executed by a peace officer. § 98, C. Cr. P.

§ 7895. **Peace officer defined.** A peace officer is a sheriff of a county or his deputy, or a constable, marshal or policeman of a township, city, village or town. § 99, C. Cr. P. am'd.

§ 7896. **To whom judge may direct warrant.** If the warrant is issued by a judge of the supreme court or by a judge of the district court it may be directed generally to any sheriff, constable, marshal or policeman in the state, and may be executed by any of such officers to whom it may be delivered in any part of the state. § 100, C. Cr. P. am'd.

§ 7897. **To whom other magistrate.** If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the county or judicial subdivision in which it is issued, and may be executed by such officer in any part of the state. § 101, C. Cr. P. am'd.

§ 7898. **Officer executing may command assistance.** An officer arresting a person for whom he has a warrant in a county or judicial subdivision other than the one in which he holds office, may in the county or judicial subdivision where he finds such person, call for assistance and command aid, and exercise authority as if in his own county.

§ 7899. **Duty of officer if felony.** If the offense charged in the warrant is a felony, the officer making the arrest must take the accused before the magistrate who issued the warrant, or some other magistrate in the same county as provided in the warrant of arrest. § 103, C. Cr. P. am'd.

§ 7900. **If a misdemeanor. Bail.** If the offense charged in the warrant is a misdemeanor not within the jurisdiction of the magistrate who issued it to punish, and the accused is arrested in another county or judicial subdivision, the officer, must, upon being § 104, C. Cr. P. am'd.

required by the accused, take him before a magistrate in that county or judicial subdivision who must admit him to bail and take bail from him accordingly. But if there is no magistrate residing within the county or judicial subdivision wherein the accused is arrested and the accused requires it, the officer must take him before a magistrate of any other county nearer or more accessible than the magistrate issuing the warrant and said magistrate must admit him to bail and take bail from him accordingly.

§ 105, C. Cr. P.
am'd.

§ 7901. Procedure when bail taken. On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the accused. The officer must then discharge the accused from arrest, and must without delay deliver the warrant and undertaking to the clerk of the court at which the accused is required to appear.

§ 106, C. Cr. P.
am'd.

§ 7902. When bail is not given. If, on the admission of the accused to bail, the bail is not forthwith given, the officer must take the accused before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county and must at the same time deliver to the magistrate the warrant with his return thereon indorsed and subscribed by him.

§ 7903. Misdemeanor within magistrate's jurisdiction. If the offense charged is within the jurisdiction of the magistrate to try and punish upon conviction, the accused, if arrested in another county or judicial subdivision, must be taken before the magistrate who issued the warrant, or, if he is absent, then before some other magistrate, as provided in the last preceding section.

§ 108, C. Cr. P.
am'd.

§ 7904. Delay prohibited. Attorney. The accused must in all cases be taken before the magistrate without unnecessary delay, and any attorney at law entitled to practice in the courts of record of North Dakota, may, at his request visit such person after his arrest.

§ 109, C. Cr. P.
am'd.

§ 7905. Magistrate not issuing the warrant. If the accused is taken before a magistrate other than the one who issued the warrant, the complaint on which the warrant was granted must be sent to that magistrate, or if it cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

§ 110, C. Cr. P.
am'd.

§ 7906. Accused from other county. When a complaint is laid before a magistrate of the commission of a crime or public offense, triable in another county of this state, but showing that the accused is in the county or judicial subdivision where the complaint is laid, the same proceedings must be had as prescribed in this article, except that the warrant must require the accused to be taken before the nearest and most accessible magistrate of the county in which the offense is triable, and the complaint of the complainant, with the depositions, if any, of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

§ 111, C. Cr. P.
am'd.

§ 7907. Taken to proper county. The officer who executes the warrant must take the accused before the nearest or most accessible magistrate of the county or judicial subdivision in which the offense is triable, and must deliver to him the complaint and the depositions, if any, and the warrant with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

§ 7908. **If offense a misdemeanor.** If the offense charged in the warrant issued pursuant to section 7906 is a misdemeanor not within the jurisdiction of the magistrate to try and punish, the officer must, upon being required by the accused, take him before a magistrate of the county in which the warrant was issued, who must admit the accused to bail and immediately transmit the warrant and complaint and depositions, if any, and undertaking, to the clerk of the court, in which the accused is required to appear. § 112, C. Cr. P. am'd.

§ 7909. **Privilege of officer.** An officer who has arrested a person charged with a crime or public offense in any county or judicial subdivision, may take and convey such person through such parts of this state as shall be in the ordinary route of travel from the place where he shall have been arrested to the place where he is to be conveyed and delivered under the process by which the arrest shall have been made, and such conveyance shall not be deemed an escape.

§ 7910. **Officer not liable to arrest.** While having in charge any person arrested in a criminal action or proceeding, neither the officer, nor any of his assistants, shall be liable to arrest on civil process; and such officer is authorized to require any citizen to aid in securing the accused, and to retake him, if he escapes, in any part of the state, as if he was within his own county; and a refusal or neglect to render such aid shall be an offense in the same manner as if he was an officer of the county or judicial subdivision where such aid is required.

§ 7911. **Giving bail deemed waiver of examination.** Any person arrested for a misdemeanor not within the jurisdiction of a magistrate to hear, try and punish, in any county or judicial subdivision other than the county or judicial subdivision wherein the offense is triable, shall, if admitted to bail and released thereon, be deemed to have waived all and every right to a preliminary examination upon said charge before any magistrate and such person may be informed against, tried and punished, upon conviction of such offense, in all respects as if such preliminary examination had been had.

ARTICLE 6. — ARREST, BY WHOM AND HOW MADE.

§ 7912. **Arrest defined.** An arrest is the taking of a person into custody in the manner authorized by law. § 113, C. Cr. P. am'd.

§ 7913. **Who may make.** An arrest may be made, either: § 114, C. Cr. P.

1. By a peace officer, under a warrant.
2. By a peace officer, without a warrant; or,
3. By a private person.

§ 7914. **Officer may summon aid.** Any officer making an arrest may orally summon as many persons as he deems necessary to aid him therein. § 115, C. Cr. P.

§ 7915. **Persons must aid.** Every person when required must aid an officer in the making of an arrest.

§ 7916. **When made for felony. Misdemeanor.** If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate indorsed upon the warrant. § 116, C. Cr. P.

§ 7917. **How arrest made.** An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer. § 117, C. Cr. P.

- § 118, C. Cr. P. **§ 7918. Restraint limited.** The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.
- § 119, C. Cr. P. **§ 7919. Warrant must be shown.** If the person making the arrest is acting under the authority of a warrant, he must so inform the defendant, and he must also show the warrant, if required.
- § 7920. Officers must obey warrant.** An officer making an arrest in obedience to a warrant, must proceed with the person arrested as commanded in the warrant, or otherwise as provided by law.
- § 120, C. Cr. P. **§ 7921. When defendant resists.** If, after notice of intention to arrest the defendant, he either flees or forcibly resists, the officer may use all necessary means to effect the arrest.
- § 121, C. Cr. P. **§ 7922. Officer may break door.** The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.
- § 123, C. Cr. P. **§ 7923. Arrest without warrant.** A peace officer may, without a warrant, arrest a person:
1. For a public offense, committed or attempted in his presence.
 2. When the person arrested has committed a felony, although not in his presence.
 3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.
 4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
- § 124, C. Cr. P. **§ 7924. May break door.** To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he is refused admittance.
- § 125, C. Cr. P. **§ 7925. Arrest at night. Reasonable cause.** He may also at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest though it afterward appears that the felony had not been committed.
- § 126, C. Cr. P. **§ 7926. Must state authority.** When arresting a person without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a public offense, or is pursued immediately after an escape.
- § 127, C. Cr. P. **§ 7927. Bystander's arrest.** He may take before a magistrate, a person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.
- § 128, C. Cr. P. **§ 7928. Offense in presence of magistrate.** When a public offense is committed in the presence of a magistrate, he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.
- § 129, C. Cr. P. **§ 7929. When private person may arrest.** A private person may arrest another:
1. For a public offense committed or attempted in his presence.
 2. When the person arrested has committed a felony, although not in his presence.
 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

§ 7930. Must inform person of cause of arrest. A private person making an arrest must, upon making the arrest, inform the person to be arrested of his intention to arrest him, and of the cause of the arrest, and require him to submit, except when he is in the actual commission of the offense or when he is arrested on pursuit immediately after its commission. § 130, C. Cr. P. am'd.

§ 7931. When private person may break door. If the person to be arrested has committed a felony, and a private person, after notice of his intention to make the arrest, is refused admittance, he may break open an outer or inner door or window of a dwelling house, for the purpose of making the arrest. § 131, C. Cr. P.

§ 7932. Private person arresting. Duty. A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer. § 132, C. Cr. P.

§ 7933. Offensive weapons taken. Any person making an arrest must take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken. § 133, C. Cr. P.

§ 7934. Procedure against person arrested without warrant. When an arrest is made without a warrant by a peace officer or by a private person, the person arrested must without unnecessary delay be taken:

1. Before the nearest or most accessible magistrate in the county or judicial subdivision where the arrest is made; or,
2. If there is no magistrate in said county or judicial subdivision qualified to act, then before the nearest or most accessible magistrate authorized to act for the county or judicial subdivision where the arrest is made. A complaint stating the charge against the person arrested, must be made before such magistrate, as provided by section 7889 of this code.

§ 7935. Who may break door. When. Any person who has lawfully entered a house for the purpose of making an arrest, or being therein makes an arrest, may break open the door or window thereof, if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid, lawfully enters for the purpose of making an arrest, and is detained therein. § 122, C. Cr. P. am'd.

ARTICLE 7. — WARRANTS AND SERVICE THEREOF BY TELEGRAPH.

§ 7936. Warrant transmitted by telegraph. Whenever a warrant for the arrest of a person accused of a crime or public offense is issued by a judge of the supreme or district court or by a magistrate of the county wherein such offense is triable, the delivery of such warrant by telegraph may be authorized by a judge of the supreme or district court, by an indorsement, authorizing such delivery, at any place within this state, upon the warrant of arrest under the hand of such judge, directed generally to any sheriff, constable, marshal or policeman in the state. After such indorsement, a telegraphic copy of such warrant may be sent by telegraph to one or more of such officers within the state, and such copy is as effectual in the hands of any such officer, and he must serve the same and in all regards proceed thereunder in the same manner as though he held an

original warrant issued by the magistrate making the indorsement thereon.

§ 7937. Duty of officer transmitting. Every officer causing telegraphic copies of a warrant to be sent must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder and signed by him.

§ 7938. Warrant returnable in county where issued. Misdemeanor. Every person arrested by warrant for any offense, when no other provision is made for his examination, must be taken before some magistrate of the county in which the warrant was issued, and the warrant with the proper return thereon, signed by the person who made the arrest, must be delivered to such magistrate. Any telegraphic copy of a warrant under which an officer has acted in making an arrest shall be deemed the original warrant. If the offense charged in the warrant is a misdemeanor within the jurisdiction of a magistrate to try and upon conviction to punish, a trial must be had as provided by law.

§ 7939. Arrest directed by telegraph. In all cases when by law a peace officer of this state, may arrest a person without a warrant, or having a warrant for the arrest of a person accused of a crime or public offense and such person may otherwise escape from this state, such officer may, by telegraph, direct any sheriff, constable, marshal or policeman in this state to arrest such person, and designate the accused in said order by name or description, or both.

§ 7940. How executed. Procedure. The order may be directed generally to any of such officers and executed by the officer receiving it. The officer executing any such order shall take into his custody, the person designated therein and detain him upon such order for such length of time as shall be necessary for the officer directing the arrest to reach the place of detention by the ordinary course and means of travel, or until sooner demanded by an officer having a warrant for the arrest of such person, but in no case shall the officer arresting such person upon such order detain him longer than the time hereinbefore mentioned.

ARTICLE 8.—RAILWAY POLICE.

§ 1, c. 106, 1889.
am'd.

§ 7941. When conductors peace officers. Each conductor of a railway or railroad train carrying passengers, while on duty in this state as such conductor is hereby invested with and possesses the authority of a peace officer of the state.

§ 1, c. 132, 1887.
am'd.

§ 7942. Railway companies may appoint police. Every railway or railroad company doing business within this state is hereby authorized to appoint, and at its own expense, to employ such persons as peace officers, at its stations or other places along the line of its road within the state, as may be by it deemed necessary, for the protection of its property or the preservation of order on its premises or in or about its cars, depots, grounds, yards, buildings or other structures, or any of the same under its control or in its possession. When any railway or railroad company doing business in this state is in the hands of or being operated by a receiver appointed by a court of this state or of the United States, the authority conferred by this section upon such company is conferred upon and may be exercised by such receiver.

§ 7943. **Powers of railway police.** Every conductor mentioned in section 7941 and every person employed as provided in section 7942 of this code, shall have and may exercise the authority of a peace officer of the state, to arrest with or without warrant, as other peace officers, any person committing an offense against the laws of the state, or the ordinances of any city, village, town or municipality, upon the premises occupied by the company or receiver thereof, by which he is employed, or in or about its cars, depots, grounds, yards, buildings or other structures or any of the same under its control or in its possession.

§ 1, c. 132, 1887.
am'd.

§ 7944. **Procedure on arrest.** Every person arrested by any conductor, or other person exercising authority conferred by this article, must be thereafter proceeded with in all respects as is or may be required by law, in cases of arrests made by other peace officers of the state, except that a conductor may cause a person so arrested by him to be so proceeded with by any other person, or officer.

§ 1, c. 132, 1887.
§ 2, c. 106, 1889.
am'd.

§ 7945. **Other peace officers.** Nothing in this article contained shall be construed to restrict, in any way, any right, authority or privilege conferred by law, upon any other peace officer of the state within his lawful jurisdiction.

§ 1, c. 132, 1887.
am'd.

§ 7946. **Railway police. No fees.** No person authorized by the provisions of this article to make arrests, shall receive or be allowed any fees or expenses for so doing.

§ 1, c. 132, 1887.
am'd.

§ 7947. **Railway company liable for acts of.** Each of such railway or railroad companies or receivers thereof is, and shall be held responsible for the acts of all conductors or other persons employed by it while acting as peace officers under the provisions of this article to the same extent as for the acts of its general agents or employees.

§ 1, c. 132, 1887.
am'd.

ARTICLE 9. — RETAKING AFTER AN ESCAPE OR RESCUE.

§ 7948. **Pursuit and rearrest.** If a person arrested escapes or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him, at any time, and in any place in the state.

§ 134, C. Cr. P.

§ 7949. **May break door or window.** To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

§ 135, C. Cr. P.

ARTICLE 10. — PRELIMINARY EXAMINATIONS.

§ 7950. **Magistrate's duty.** When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination before any further proceedings are had.

§ 136, C. Cr. P.

§ 7951. **Must allow accused counsel.** He must also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to such counsel in the county or city as the defendant may name. The officer must, without delay, perform that duty, and shall receive fees therefor as upon service of a subpoena.

§ 137, C. Cr. P.

§ 138, C. Cr. P.
am'd.

§ 7952. Examination. The magistrate before whom the accused is brought, must, unless a change of the place of trial is had under the provisions of the next section, immediately after the appearance of counsel, or if none appears and the accused requires the aid of counsel, after waiting a reasonable time therefor, proceed to examine the case.

§ 1, c. 82, 1887.
am'd.

§ 7953. Change of place of trial. Whenever a person accused of a public offense is brought before a justice of the peace for examination and, at any time before such examination is commenced, he files with such justice his affidavit stating that by reason of the bias or prejudice of said justice, he believes he cannot have a fair and impartial examination before him, such justice must transfer said action, and all the papers therein including a certified copy of his docket entries, to another justice of the same county, if there is another justice in said county qualified to act; provided, that unless the parties agree upon the justice to whom said action shall be transferred, it shall be sent to the nearest justice of the county, but no more than one change of the place of examination under this section shall be had in an action.

§ 139, C. Cr. P.
am'd.

§ 7954. Adjournment. The examination must be completed at one session unless the magistrate for good cause adjourns it. The adjournment cannot be for more than three days at each time, nor more than fifteen days in all, unless by the consent, or on the motion of the defendant.

§ 140, C. Cr. P.
am'd.

§ 7955. Disposition of accused on adjournment. If an adjournment is had for any cause and the defendant is charged with a capital offense, he must be committed in the meantime, otherwise the magistrate must commit the defendant for examination, or discharge him from custody, upon sufficient bail or the deposit of money, as provided in this code, as security for his appearance at the time to which the examination is postponed.

§ 141, C. Cr. P.

§ 7956. Form. Commitment for examination. The commitment for examination is by an indorsement signed by the magistrate, on the warrant of arrest, to the following effect:

The within named A. B., having been brought before me under this warrant, and having failed to give bail for his appearance, is committed to the sheriff of the county of..... (or to the marshal of the city of, as the case may be,) to await examination on the day of, 18.... at o'clock,M. at which time you will have his body before me at my office.

§ 142, C. Cr. P.

§ 7957. Examination. Procedure. At the examination the magistrate must, in the first place, read to the accused the complaint on file before him. He must also, after the commencement of the prosecution, issue subpoenas for any witnesses required by the prosecution or the defendant.

§ 7958. Same. Witnesses kept separate. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

§ 7959. Same. Who excluded. The magistrate may also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general of the state, the state's attorney of the county, the

defendant and his counsel and such other person as he may designate, and the officer having the defendant in custody.

§ 7960. **How witnesses examined.** The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf. And on demand of the defendant all the testimony in the case must be reduced to writing in the form of depositions. § 143, C. Cr. P.

§ 7961. **Accused may produce witnesses.** When the examination of the witnesses on the part of the state is closed, any witnesses the defendant may produce must be sworn and examined. § 144, C. Cr. P.

§ 7962. **Magistrate. Disposition of depositions.** The magistrate or his clerk must keep the depositions taken, and exhibits admitted as evidence on the examination until returned to the proper court; and must not permit such testimony to be examined or copied by any person except a judge of the court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney general of the state, the state's attorney of the county or judicial subdivision, or other prosecuting attorney and the defendant and his counsel. § 145, C. Cr. P. am'd.

§ 7963. **Violation. Misdemeanor.** Every violation of the last section is punishable as a misdemeanor. § 146, C. Cr. P.

§ 7964. **Procedure. Accused discharged.** After hearing the evidence on behalf of the respective parties, if it appears either that a public offense has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the complaint over his signature, to the following effect: "There being no sufficient cause to believe the within named.....guilty of the offense within mentioned, I order him discharged." § 147, C. Cr. P.

§ 7965. **Malicious prosecution. Costs taxed.** If the defendant on a preliminary examination for a public offense is discharged as provided in section 7964 and if the magistrate finds that the prosecution was malicious or without probable cause, he shall enter such judgment on his docket and tax the costs against the complaining witness, which shall be enforced as judgments for costs in criminal cases, and execution may issue therefor. § 2, c. 38, 1881.

§ 7966. **Procedure. Accused held to answer.** If, however, it appears from the examination that a public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner, indorse on the complaint an order signed by him, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any other offense, according to the fact, stating generally the nature thereof), has been committed and that there is sufficient cause to believe the within named..... guilty thereof, I order that he be held to answer the same." § 148, C. Cr. P.

§ 7967. **When offense not bailable.** If the offense is not bailable, the following words or words to the same effect, must be added to the indorsement: "And that he is hereby committed to the sheriff of.....," (or to the marshal of the city of..... or as the case may be). § 149, C. Cr. P.

§ 7968. **When offense bailable.** If the offense is bailable, and bail is taken by the magistrate, the following words or words to the same effect, must be added to the indorsement mentioned in sec-

tion 7966: "And I have admitted him to bail, to answer, by the undertaking hereto annexed."

§ 151, C. Cr. P. **§ 7969. When bail not taken.** If the offense is bailable, and the defendant is admitted to bail, but bail has not been taken, the following words or words to the same effect, must be added to the indorsement mentioned in section 7966: "And that he is admitted to bail in the sum of dollars, and be committed to the sheriff of the county of, (or the marshal of the city of, or as the case may be), until said bail is given."

§ 152, C. Cr. P. **§ 7970. Commitment. Procedure.** If the magistrate orders the defendant to be committed as provided in sections 7967 and 7969 he must make out a commitment, signed by him with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer is not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

§ 153, C. Cr. P. **§ 7971. Form of commitment.** The commitment must be to the following effect:

State of North Dakota, }
County of } ss.

The state of North Dakota to the sheriff of the county of
..... (or marshal of the city of, or as the case may be):

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, with time and place as near as may be), you are commanded to receive him into your custody, and detain him until he is legally discharged.

Dated at, this day of, 18..

C. D., Justice of the Peace.
(or as the case may be).

§ 154, C. Cr. P. **§ 7972. Witness to give undertaking.** On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the state, a written undertaking, without surety, to the effect that he will appear and testify at the court to which the complaint and depositions, if any, are to be sent, or that he will forfeit such sum as the magistrate may fix and determine.

§ 155, C. Cr. P. **§ 7973. Sureties may be required.** When the magistrate is am'd. satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security is required, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

§ 156, C. Cr. P. **§ 7974. Married women and minors.** When a married am'd. woman or a minor is a material witness, any other person may be allowed to give an undertaking for the appearance of such witness; or the magistrate may, in his discretion, take the undertaking of such married woman or minor in a sum not exceeding fifty dollars, which is valid and binding in law, notwithstanding the disability of minority.

§ 157, C. Cr. P. **§ 7975. Refusal. Witness committed.** If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

§ 7976. Security may be subsequently demanded. When, however, in pursuance of section 7972, any material witness on the part of the prosecution has been discharged on his undertaking, without surety, if afterwards, on the sworn application of the state's attorney or other person on behalf of the state, made to the magistrate or to any judge, it satisfactorily appears that the presence of such witness or any other person on the part of the prosecution is material or necessary on the trial in court, such magistrate or judge may compel such witness, or any other material witness on the part of the state, to give an undertaking with sureties, to appear on the said trial and give his testimony therein, and for that purpose, the said magistrate or judge may issue a warrant against any such person, under his hand, with or without seal, directed to a sheriff, marshal or other peace officer, to arrest such person and bring him before such magistrate or judge. § 158, C. Cr. P. am'd.

§ 7977. Witness may be confined. And in case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said magistrate or judge, he may issue a warrant of commitment against such person, which shall be delivered to said sheriff or other peace officer, whose duty it shall be to convey such person to the jail mentioned in said warrant, and the person shall remain in confinement until he shall be removed to the grand jury or to the court, for the purpose of giving his testimony, or until he shall have given the undertaking required by said magistrate or judge, or until he is otherwise discharged according to law. § 159, C. Cr. P.

§ 7978. Magistrate must return papers. When a magistrate has discharged a defendant or has held him to answer, as provided in sections 7964 and 7966, he must return immediately to the district court of the county or judicial subdivision, the warrant, if any, the complaint, the deposition of all the witnesses examined before him, if any have been taken, and exhibits and all undertakings of bail or for the appearance of witnesses, taken by him, together with a certified copy of the record of the proceedings as it appears on his docket. § 160, C. Cr. P.

CHAPTER 7.

PROCEEDINGS ON INFORMATION OR INDICTMENT.

ARTICLE 1. — PRELIMINARY PROVISIONS.

§ 7979. Public offenses, how prosecuted. All crimes or public offenses triable in the district courts must be prosecuted by information or indictment, except as provided in the next section. § 161, C. Cr. P. am'd.

§ 7980. Removal from office. When the proceedings are for the removal of a district, county, township, city or municipal officer, or of a state officer not liable to impeachment, they may be commenced by an accusation in writing as provided in article 2, chapter 4, of this code. § 162, C. Cr. P. am'd.

§ 7981. Same. Jurisdiction. Exception. All accusations against district, county, township or municipal officers, or state officers not liable to impeachment, must be found, or presented to and filed in the district court; but nothing herein shall be construed to prevent said officers from being proceeded against for a crime or public offense in the same manner as now is or may hereafter be provided by law for proceeding against other persons accused of a crime or public offense, or to limit the power of the court to remove such officers from office, upon conviction, when authorized by law so to do.

ARTICLE 2.—THE INFORMATION.

§ 1, c. 71, 1890.
am'd.

§ 7982. Prosecution on information. In what cases. During each term of the district court held in and for any county or judicial subdivision in this state at which a grand jury has not been summoned and impaneled, the state's attorney of the county or judicial subdivision, or other person appointed by the court, as provided by law, to prosecute a criminal action, shall file an information, or informations as the circumstances may require, respectively, against all persons accused of having committed a crime or public offense within such county or judicial subdivision or triable therein:

1. When such person or persons have had a preliminary examination before a magistrate for such crime or public offense and, from the evidence taken thereat, the magistrate has ordered that said person or persons be held to answer to the offense charged or some other crime or public offense disclosed by the evidence.

2. When the crime or public offense is committed during the continuance of the term of the district court in and for the county or judicial subdivision in which the offense is committed or triable.

3. When a person accused of a crime or public offense is arrested and waives, in writing, or if before a magistrate, orally, a preliminary examination therefor.

4. When a person accused of a misdemeanor not within the jurisdiction of a magistrate to try and punish, has been arrested and admitted to bail at a place other than the county or judicial subdivision in which said offense is triable; or.

5. At any time, when the person accused of a crime or public offense is a fugitive from justice and such information may be needed by the governor of this state to demand such person from the executive authority of any other state or territory within the United States, or to aid the proper executive authority of the United States to demand such person of any foreign government.

§ 7, c. 71, 1890.
am'd.

§ 7983. State's attorney must inquire into charges. The state's attorney of the county or judicial subdivision in which any person charged with the commission of a crime or public offense has been held to answer, or other person appointed by the court as provided by law to prosecute, must make full examination and inquiry into the facts and circumstances touching any crime or public offense committed by the accused and triable in said county or judicial subdivision, and must file an information setting forth the crime committed according to the facts ascertained on such examination and inquiry and from the written testimony taken before the magistrate, whether it is the offense charged in the complaint upon which the examination was had or some other offense.

§ 7984. Procedure when no information filed. If the state's attorney, or other person appointed to prosecute, in any such case, determines that an information ought not to be filed, he must make, subscribe and file with the clerk of the district court of the county or judicial subdivision, a statement in writing setting forth his reasons in fact and in law for not filing an information; such statement must be filed at and during the term of the court to which the accused is held to appear for trial. The court must thereupon examine such statement together with the evidence filed in the case, and if, upon such examination, the court is not satisfied with such statement, the state's attorney, or person appointed to prosecute, must be directed and required by the court to file the proper information and bring the case to trial. But if the court does not require that an information be filed and the defendant is not held or wanted to answer for any other crime or public offense, he shall be discharged and his bail exonerated or money deposited refunded to him. § 7, c. 71, 1890.
am'd.

§ 7985. Information. Filing. Names of witnesses. All informations filed under the provisions of this article, shall be by the state's attorney of the county or judicial subdivision, or by the person appointed to prosecute, as informant; and said state's attorney or person appointed to prosecute shall subscribe his name to said information and indorse or otherwise exhibit thereon the names of all witnesses for the prosecution known to him to be such at the time of the filing of the same, but other witnesses may testify, in behalf of the prosecution, on the trial of said action, the same as if their names had been indorsed upon the information. § 2, c. 71, 1890.
am'd.

§ 7986. Verification. Form of. The information must be verified by the state's attorney or by the person appointed to prosecute, or by the prosecuting witness, or by some other person, and said verification must be signed by the person verifying and may be to the effect that the person verifying has read or heard the information read, and knows the contents thereof, and that he is informed and verily believes that the facts set forth therein are true, and from said knowledge, information and belief he states the same to be true. § 3, c. 71, 1890.
am'd.

§ 7987. Information. Form of amendment. The information must conform to the requirements of the article of this code entitled, "Rules of Pleading and Form of the Information or Indictment," and may be amended in matter of form, without a new verification, or of substance with a new verification at any time before the defendant pleads, without leave of the court. The information may be amended at any time thereafter or during the trial as to all matters of form, at the discretion of the court, when the same can be done without prejudice to the rights of the defendant. No amendment must cause any delay of the trial unless for good cause shown by affidavit. § 4, c. 71, 1890.
am'd.

ARTICLE 3.—CALLING OF THE GRAND JURY.

§ 7988. Grand jury defined. Formation. A grand jury is a body of men, consisting of not less than sixteen nor more than twenty-three persons of the county possessing the qualifications prescribed by law, and impaneled and sworn to inquire into and true presentment make to the district court of all crimes or public offenses against the laws of this state committed or triable within the county or judicial subdivision for which the court is holden. § 2, c. 62, 1885.
am'd.

§ 9, c. 71, 1890.
am'd.

§ 7989. When grand jury may be called. No grand jury shall be drawn or summoned to attend at the session of any district court within this state unless the judge thereof shall so direct by order in writing under his hand and filed with the clerk of the court at which said grand jury is required to attend. The judge of the district court in and for any county or judicial subdivision must, in the manner herein provided, direct that a grand jury be drawn and summoned to attend at a term of the said court, whenever:

1. He shall deem the attendance of such jury necessary for the due enforcement of the laws of this state;

2. The board of county commissioners of the county wherein the court is to be held, in writing, requests him so to do; or,

3. A petition in writing, signed by at least twenty-five resident freeholders or taxpayers of said county or judicial subdivision and requesting the same is presented to such judge. The request provided for in subdivision 2 of this section and the petition mentioned in subdivision 3 hereof must be presented to such judge at least fifteen days before the commencement of the term at which the attendance of a grand jury is requested.

ARTICLE 4.—FORMATION OF THE GRAND JURY.

§ 166, C. Cr. P.

§ 7990. Challenges. State. Accused. The state or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual grand juror.

§ 164, C. Cr. P.
am'd.

§ 7991. Challenge allowed. Procedure. Whenever a challenge to the panel or to an individual grand juror is allowed, the court shall make an order to the sheriff or other officer to summon without delay from the body of the county, a sufficient number of persons to complete or to form a grand jury.

§ 165, C. Cr. P.

§ 7992. Twelve jurors may find an indictment. No indictment shall be found, nor shall any presentment or accusation be made, without the concurrence of at least twelve grand jurors.

§ 167, C. Cr. P.

§ 7993. Challenge to panel. Causes for. A challenge to the panel may be interposed by either party for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury box of the county or subdivision.

2. That notice of the drawing of the grand jury was not given.

3. That the drawing was not had in the presence of the officers designated by law, or in the manner prescribed by law.

§ 168, C. Cr. P.

§ 7994. Challenge allowed, jury discharged. If a challenge to the panel is allowed, the grand jury must be discharged.

§ 169, C. Cr. P.
am'd.

§ 7995. Challenge to individual grand juror. Causes for. A challenge to an individual grand juror may be interposed by either party, for one or more of the following causes only:

1. That he is a minor.

2. That he is not a qualified elector.

3. That he is otherwise disqualified under any of the provisions of article 10, chapter 7 of the political code.

4. That he is insane.

5. That he is a prosecutor upon a charge against the defendant.

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

7. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals or common notoriety, provided it satisfactorily appears to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him.

§ 7996. Challenge may be oral or written. Challenges may be oral or in writing, and must be tried by the court. § 170, C. Cr. P.

§ 7997. Challenge allowed or disallowed. Clerk. Entry. The court must allow or disallow the challenge, and the clerk must enter its decision upon the minutes. § 171, C. Cr. P.

§ 7998. Effect of challenge allowed. If a challenge to an individual grand juror is allowed, he cannot be present at or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. § 172, C. Cr. P.

§ 7999. Violation. Punishment. The grand jury must inform the court of a violation of the last section, and it is punishable by the court as a contempt. § 173, C. Cr. P.

§ 8000. Challenge must be before jury is sworn. Neither the state, nor a person held to answer a charge for a public offense, can take advantage of any objection to the panel or to an individual grand juror unless it is by challenge, and before the grand jury is sworn, except that after the grand jury is sworn and before the indictment is found, the court may, in its discretion, upon a good cause shown, receive and allow a challenge. § 174, C. Cr. P.

§ 8001. Court may order another grand jury. If the grand jury is discharged by an allowance of a challenge to the whole panel, or if an offense is committed during the sitting of the court, after the regular discharge of the grand jury, or if after such discharge a new indictment becomes requisite by reason of an arrest of judgment or by the quashing of an indictment, or if from any other good and sufficient cause another grand jury may become necessary, the court may, in its discretion, order that another grand jury be summoned, and the court may to that end forthwith make an order to the county commissioners for the immediate selection and furnishing to the clerk of a list of jurors, and may make such further orders to the clerk, sheriff and other officers for an immediate compliance with their duties as may be proper to obtain another grand jury at and during the same term of the court. § 175, C. Cr. P.

§ 8002. Special grand jury. A grand jury formed and impaneled as to and in a particular case, after a challenge or challenges to individual grand jurors have been allowed, shall only be sworn to act in such particular case, and as to all other cases at the same term of the court the grand jury shall be formed in the usual manner provided by law. § 176, C. Cr. P.

§ 8003. Court may appoint foreman. From the persons summoned to serve as grand jurors, and appearing, the court must appoint a foreman. The court must also appoint a foreman when a person already appointed is discharged or excused before the grand jury are dismissed. § 177, C. Cr. P.

§ 178. C. Cr. P. **§ 8004. Oath to foreman.** The following oath must be administered to the foreman of the grand jury:

“You, as foreman of this grand jury, shall diligently inquire into, and true presentment make, of all public offenses against this state, committed or triable within this county (or subdivision), of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the state, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favor or affection, or for any reward or the promise or hope thereof; but in all your presentments or indictments, you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding. So help you God.”

§ 179. C. Cr. P. **§ 8005. Oath to other grand jurors.** The following oath must be immediately thereupon administered to the other grand jurors present:

“The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God.”

§ 180. C. Cr. P. **§ 8006. Court must charge grand jury.** The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper as to the nature of their duties, and as to any charges for public offenses returned to the court, or likely to come before the grand jury.

§ 181. C. Cr. P. **§ 8007. Jury must retire.** The grand jury must then retire to a private room and inquire into the offenses cognizable by them.

§ 182. C. Cr. P. **§ 8008. Clerk. Appointment. His duty.** The grand jury must appoint one of their number as clerk, who must preserve minutes of their proceedings, except of the votes of the individual members, and of the evidence given before them.

§ 183. C. Cr. P. **§ 8009. When jury to be discharged.** On the completion of the business before them, or whenever the court shall be of opinion that the public interests will not be subserved by a further continuance of the session, the grand jury must be discharged by the court; but whether the business is completed or not, they are discharged by the final adjournment of the court.

ARTICLE 5. — POWERS AND DUTIES OF THE GRAND JURY.

§ 184. C. Cr. P. **§ 8010. General powers and duties.** The grand jury has power, and it is their duty to inquire into all public offenses committed or triable in the county or subdivision, and to present them to the court, either by presentment or indictment, or accusation in writing.

§ 185. C. Cr. P. **§ 8011. Presentment defined.** A presentment is an informal statement in writing by the grand jury, representing to the court that a public offense has been committed, which is triable in the county or subdivision, and that there is reasonable ground for believing that a particular individual, named or described, has committed it.

§ 8012. Oath to witness. The foreman may administer an oath to any witness appearing before the grand jury. § 187, C. Cr. P.

§ 8013. What evidence receivable. In the investigation of a charge for the purpose of either presentment or indictment or accusation, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence. § 188, C. Cr. P. am'd.

§ 8014. Evidence. Legal. Best. The grand jury can receive none but legal evidence and the best evidence in degree to the exclusion of hearsay or secondary evidence. § 189, C. Cr. P.

§ 8015. Evidence of the accused. The grand jury shall upon the request of the accused, and may of their own motion, hear the evidence of the accused. It is their duty to weigh all the evidence submitted to them and when they have reason to believe that there is other evidence they may order such evidence to be produced and for that purpose the state's attorney shall issue process for the witnesses. § 190, C. Cr. P. am'd.

§ 8016. When indictment ought to be found. The grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial jury. § 191, C. Cr. P.

§ 8017. Member must give evidence. If a member of the grand jury knows or has reason to believe, that a public offense has been committed, which is triable in the county or subdivision, he must declare the same to his fellow jurors, who must thereupon investigate the same. § 192, C. Cr. P.

§ 8018. Concerning what grand jury must inquire. The grand jury must inquire: § 193, C. Cr. P.

1. Into the case of every person imprisoned in the jail of the county or subdivision, on a criminal charge, and not indicted.

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

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

§ 8019. Entitled to access to prisons and public records. They are also entitled to free access at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county. § 194, C. Cr. P.

§ 8020. Jury's privilege. Advice. Court. State's attorney. The grand jury may at all reasonable times ask the advice of the court or of the state's attorney. The state's attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable before them, and may interrogate witnesses before them whenever he thinks it necessary; but no other person is permitted to be present during their sessions except the members and a witness actually under examination, and no person whomsoever must be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them. § 195, C. Cr. P.

§ 8021. Secrecy. Things said. Votes. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them. § 196, C. Cr. P.

§ 8022. When juror may disclose. A member of the grand jury may, however, be required by any court to disclose the testimony § 197, C. Cr. P.

of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

- § 198. C. Cr. P. **§ 8023. Grand juror cannot be questioned.** A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation or giving testimony to his fellow jurors.

ARTICLE 6. — PRESENTMENT AND PROCEEDINGS THEREIN.

- § 199. C. Cr. P. **§ 8024. Presentment, how found. Signed.** A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be signed by the foreman.

- § 200. C. Cr. P. **§ 8025. Presented to court.** The presentment when found must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

- § 201. C. Cr. P. **§ 8026. Bench warrant may issue.** If the facts stated in the presentment constitute a public offense triable in the county or subdivision, the court must direct the clerk to issue a bench warrant for the arrest of the defendant.

- § 202. C. Cr. P. **§ 8027. Issued by clerk.** The clerk, on the application of the judge or state's attorney, may, accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties, or into any part of the state.

- § 203. C. Cr. P. **§ 8028. Form of warrant.** The bench warrant, upon presentment, must be substantially in the following form:

State of North Dakota, }
County of } ss.

To any sheriff, constable, marshal or policeman in this state:

A presentment having been made on the day of 18....., to the district court of the county of (or subdivision) charging C. D. with the crime of (designating it generally) you are therefore commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of the county of; or in case of his absence or inability to act, before the nearest and most accessible magistrate in county.

Given under my hand, with the seal of said court affixed, this..... day of A. D. 18.....

By order of the court.

[Seal]

....., clerk.

- § 204. C. Cr. P. **§ 8029. Where and how warrant may be served.** The bench warrant may be served in any county or part of the state, and the officer serving it must proceed thereon as upon a warrant of arrest.

- § 205. C. Cr. P. **§ 8030. Magistrate's procedure on warrant.** The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on a complaint.

ARTICLE 7.—FINDING AND PRESENTATION OF THE INDICTMENT.

§ 8031. **Finding. Twelve jurors must concur.** An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be indorsed "a true bill," and the indorsement must be signed by the foreman of the grand jury. § 206, C. Cr. P.

§ 8032. **When accused must be dismissed.** If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the original complaint and the certified record of the proceedings before the magistrate transmitted to them, must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed. § 207, C. Cr. P.

§ 8033. **Dismissal of charge. Resubmission.** The dismissal of the charge does not, however, prevent its being again submitted to a grand jury as often as the court may so direct. But without such direction it cannot be again submitted. § 208, C. Cr. P.

§ 8034. **Names of witnesses on indictment.** When an indictment is found, the names of the witnesses examined before the grand jury must, in all cases, be inserted at the foot of the indictment or indorsed thereon before it is presented to the court. § 209, C. Cr. P. am'd.

§ 8035. **Presentment of indictment.** An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record. § 210, C. Cr. P.

§ 8036. **Persons indicted, how arrested.** When an indictment is found against a defendant who has not been previously arrested, and is not under bail, the same proceedings must be had as are prescribed in sections 8065 to 8072 inclusive, against a defendant who fails to appear for arraignment. § 211, C. Cr. P.

CHAPTER 8.

RULES OF PLEADING AND FORM OF THE INFORMATION OR INDICTMENT.

§ 8037. **Forms of pleadings in criminal actions.** All the forms of pleading in criminal actions, and rules by which the sufficiency of pleadings is to be determined are those prescribed by this code. § 212, C. Cr. P.

§ 8038. **First pleading, information or indictment.** The first pleading on the part of the state is the information or the indictment. § 213, C. Cr. P. am'd.

§ 8039. **What information or indictment must contain.** The information or indictment must contain: § 214, C. Cr. P. am'd.

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

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

§ 215, C. Cr. P.
am'd.

§ 8040. Things as to which allegations must be certain and direct. The allegations of the information or the indictment must be direct and certain as regards:

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

§ 216, C. Cr. P.
am'd.

§ 8041. Fictitious name. True name. When a defendant is informed against, indicted or prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being prosecuted by the name mentioned in the information or indictment.

§ 217, C. Cr. P.
am'd.

§ 8042. Charge. One offense. Different counts. The information or the indictment must charge but one offense, but the same offense may be set forth in different forms or degrees under different counts; and when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

§ 218, C. Cr. P.
am'd.

§ 8043. Time offense committed. The precise time at which the offense was committed need not be stated in the information or in the indictment; but it may be alleged to have been committed at any time before the filing thereof, if an information; or if an indictment, before the finding thereof, except when the time is a material ingredient in the offense.

§ 219, C. Cr. P.

§ 8044. Certain errors not material. When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

§ 220, C. Cr. P.
am'd.

§ 8045. Construction of words. The words used in an information or in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

§ 221, C. Cr. P.
am'd.

§ 8046. Statutory words not strictly pursued. Words used in a statute to define a public offense, need not be strictly pursued in the information or indictment; but other words conveying the same meaning may be used.

§ 222, C. Cr. P.
am'd.

§ 8047. When information or indictment sufficient. The information or indictment is sufficient if it can be understood therefrom:

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

2. That it was presented by a person authorized by law so to do, if an information; or if an indictment, that it was found by a grand jury of the county or judicial subdivision in which the court was held.

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the informant or, as the case may be, to the grand jury, unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except when the act, though done without the local jurisdiction of the county or judicial subdivision is triable therein.

5. That the offense was committed at some time prior to the time of the presenting of the information or of the finding of the indictment.

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

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

§ 8048. Errors of form disregarded. No information or indictment is insufficient, nor can the trial, judgment or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits. § 223, C. Cr. P. am'd.

§ 8049. What need not be stated. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an information or in an indictment. § 224, C. Cr. P. am'd.

§ 8050. Pleading judgment. Jurisdictional facts. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial. § 225, C. Cr. P.

§ 8051. Pleading private statute. Title. Day of passage. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. § 226, C. Cr. P.

§ 8052. Libel. Extrinsic facts. Sufficient statements. An information or an indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the information or indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. § 227, C. Cr. P. am'd.

§ 8053. Forgery. Instrument destroyed. Misdescription. When the instrument which is the subject of an information or indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the information or indictment and established on the trial, the misdescription of the instrument is immaterial. § 228, C. Cr. P. am'd.

§ 8054. Perjury. Substance. Oath. Authority. Falsity. In an information or indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the information or indictment need not set forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. § 229, C. Cr. P. am'd.

§ 8055. Larceny. Embezzlement. Sufficient allegations. In an information or indictment for larceny or embezzlement of § 230, C. Cr. P. am'd.

money, bank notes, certificates of stock or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock or valuable securities, without specifying the coin, number, denomination or kind thereof.

§ 231. C. Cr. P.
am'd.

§ 8056. Obscene literature. Sufficient allegations. An information or indictment for exhibiting, publishing, passing, selling or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

§ 8057. Personal property. Several owners. Sufficient allegations. When an offense is committed upon, or in relation to, any personal property belonging to several partners or owners, the information or indictment for such offense is sufficient, if it alleges such property to belong to any one or more of such partners or owners without naming them all.

§ 232. C. Cr. P.
am'd.

§ 8058. Several defendants. Convicted. Acquitted. Upon an information or indictment against several defendants, any one or more may be convicted, or acquitted.

§ 233. C. Cr. P.
am'd.

§ 8059. Accessories. Principals. Certain distinctions abrogated. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid or abet in its commission, though not present, must be prosecuted, tried and punished as principals, and no other facts need be alleged in the information or indictment against such an accessory, than are required in an information or indictment against his principals.

§ 234. C. Cr. P.
am'd.

§ 8060. Accessory punished, though principal not. An accessory to the commission of a felony may be prosecuted, tried and punished, though the principal felon may be neither prosecuted nor tried, and though the principal may have been acquitted.

§ 235. C. Cr. P.
am'd.

§ 8061. Compounding felony. Punishment. A person may be prosecuted, tried and convicted, for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense has not been prosecuted.

CHAPTER 9.

PLEADINGS AND PROCEEDINGS AFTER INFORMATION
OR INDICTMENT AND BEFORE THE COM-
MENCEMENT OF THE TRIAL.

ARTICLE 1.—ARRAIGNMENT OF THE DEFENDANT.

§ 8062. **When and where defendant arraigned.** When the information or indictment is filed, the defendant must be arraigned thereon before the court to which it is presented, if an information; or if an indictment, in which it is found, if triable therein, if not, before the court to which it is removed or transmitted. § 236. C. Cr. P. am'd.

§ 8063. **Felony, defendant present. Misdemeanor, counsel.** If the information or indictment is for a felony the defendant must be personally present, but if a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel. § 237. C. Cr. P. am'd.

§ 8064. **Presence enforced by direction of court.** When his personal appearance is necessary, if he is in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned, and the officer must do so accordingly. § 238. C. Cr. P.

§ 8065. **Same. Warrant of arrest.** If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned, when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest. § 239. C. Cr. P.

§ 8066. **Warrant, clerk to issue.** The clerk, on the application of the state's attorney, may, accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant into one or more counties. § 240. C. Cr. P.

§ 8067. **Warrant, form. Felony.** The bench warrant upon the information or indictment, must, if the offense is a felony, be substantially in the following form: § 241. C. Cr. P. am'd.

State of North Dakota, }
County of..... } ss.

To any sheriff, constable, policeman or marshal in this state:

An information (or indictment as the case may be), having been filed on the.....day of....., 18..., in the district court in and for the county (or judicial subdivision of.....), chargingwith the crime of....., (designating it generally); you are therefore commanded forthwith to arrest the above namedand bring him before that court (or before the court to which the information or indictment may have been removed, naming it), to answer said information (or indictment), or if the court has adjourned for the term, that you deliver him into the custody of the sheriff of the county of.....

Given under my hand, with the seal of said court affixed, thisday of....., 18...

By order of the court.

[Seal.]

....., clerk.

§ 8068. **Same. Misdemeanor. Bailable felony.** If the offense is a misdemeanor or a bailable felony, the bench warrant must

be in a similar form, adding to the body thereof a direction to the following effect, "or if he requires it that you take him before any magistrate of that county or in the county in which you arrest him, that he may give bail to answer the information (or indictment)."

§ 243. C. Cr. P.

§ 8069. Court fix amount of bail. If the offense charged is bailable the court, upon directing the bench warrant to issue, must fix the amount of bail; and an indorsement must be made on the bench warrant and signed by the clerk, to the following effect:

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

§ 244. C. Cr. P.

§ 8070. Arrest. Offense not bailable. Custody. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county or judicial subdivision in which the information is filed or indictment found.

§ 245. C. Cr. P.

§ 8071. Warrant served in any county. The bench warrant may be served in any county or judicial subdivision of the state in the same manner as a warrant of arrest.

§ 246. C. Cr. P.

§ 8072. Magistrate. Taking bail. Procedure. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon.

§ 247. C. Cr. P.
am'd.

§ 8073. Felony. Bail given. Increased amount. When the information or indictment is for a felony, and the defendant, before the filing or finding thereof, has given bail for his appearance to answer the charge, the court to which the information or indictment is presented, or sent or removed for trial, may order the defendant to be committed to actual custody either without bail, or unless he gives bail in an increased amount, to be specified in the order.

§ 248. C. Cr. P.

§ 8074. Procedure. Defendant present. Absent. If the defendant is present when the order is made, he must be forthwith committed accordingly. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this article.

§ 249. C. Cr. P.

§ 8075. Arraignment. Counsel for defendant. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

§ 250. C. Cr. P.
am'd.

§ 8076. How arraignment made. The arraignment must be made by the court, or by the clerk or state's attorney under its direction, and consists of reading the information or indictment to the defendant, and asking him whether he pleads guilty or not guilty to the information or indictment.

§ 251. C. Cr. P.
am'd.

§ 8077. Defendant's true name. When the defendant is arraigned, he must be informed that if the name by which he is informed against or indicted is not his true name, he must disclose his true name or be proceeded against by the name in the information or indictment.

§ 252. C. Cr. P.

§ 8078. No other name given. If he gives no other name, the court may proceed accordingly.

§ 253. C. Cr. P.
am'd.

§ 8079. Another name given, procedure. If he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent pro-

ceedings on the information or indictment may be had against him by that name, referring also to the name by which he is informed against or indicted.

§ 8080. Time to answer given defendant. If, on the arraignment, the defendant requires it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the information or indictment. § 254, C. Cr. P. am'd.

§ 8081. Answer. Motion to set aside. Demurrer. Plea. If the defendant does not require time, as provided in the last section, or if he does, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the information or indictment, or may demur or plead thereto. § 255, C. Cr. P. am'd.

ARTICLE 2.—SETTING ASIDE THE INFORMATION OR INDICTMENT

§ 8082. Causes for setting aside, classified. The information or indictment must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases: § 256, C. Cr. P. am'd.

If it is an information:

1. In all cases when the defendant is entitled to a preliminary examination before a magistrate, before the filing of such information, when he has not had such examination and been held to answer before the district court, or has not waived such examination in writing, or orally before a magistrate.

2. When the information is not subscribed by a person authorized to act as informant.

3. When the information is not verified; or,

If it is an indictment:

1. When it is not found, indorsed and presented or filed as prescribed by this code.

2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or otherwise exhibited thereon.

3. When a person is permitted to be present during the session of the grand jury, while the charges embraced in the indictment are under consideration, except as provided in section 8020.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

§ 8083. Motion. Form. Contents. Time. The motion to set aside the information or indictment must be in writing, subscribed by the defendant or his attorney, and must specify clearly the ground of objection to the information or indictment, and said motion must be made before the defendant demurs or pleads, or the objection is waived. § 257, C. Cr. P. am'd.

§ 8084. When motion heard. The motion must be heard at the time it is made, unless for good cause the court postpones the hearing to another time. § 258, C. Cr. P.

§ 8085. Motion denied, answer immediately. If the motion is denied, the defendant must immediately answer the information or indictment, either by demurring or pleading thereto. § 259, C. Cr. P. am'd.

§ 260, C. Cr. P.
am'd.

§ 8086. Motion granted. Procedure. If the motion is granted the court must order that the defendant, if in custody, be discharged therefrom, or, if admitted to bail, that the bail be exonerated, or, if he has deposited money instead of bail, that the same be refunded to him, unless the court directs that another or an amended information be filed or that the case be submitted to the same or another grand jury; or, if the case is such that an information might have been filed against the defendant had a grand jury not been called at the time, or the defendant at any time waives a preliminary examination, in writing, the court may direct an information to be filed for the offense charged in the indictment set aside.

§ 261, C. Cr. P.
am'd.

§ 8087. Further prosecution. Procedure. If the court directs that another or an amended information be filed or that the case be resubmitted to the same or another grand jury, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail or money has been deposited instead therefor, the bail or money is to be answerable for the appearance of the defendant to answer a new information or indictment, and unless another or an amended information or an information in the place of the indictment set aside, as provided in the last section, is filed within ten days from the date of the order, or the filing of the defendant's waiver of a preliminary examination, or a new indictment is found at the same or next term of the district court, as the case may be, the defendant must be discharged and his bail exonerated or money refunded as provided in the preceding section.

§ 262, C. Cr. P.
am'd.

§ 8088. Order setting aside, not a bar. An order setting aside an information or indictment, as provided in this article is no bar to a future prosecution for the same offense.

ARTICLE 3. — DEMURRER.

§ 263, C. Cr. P.

§ 8089. Defendant's pleading. Demurrer. Plea. The only pleading on the part of the defendant is either a demurrer or a plea.

§ 264, C. Cr. P.

§ 8090. Made in open court. Time. Both the demurrer and the plea must be put in in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

§ 265, C. Cr. P.
am'd.

§ 8091. Grounds of demurrer. The defendant may demur to the information or indictment when it appears upon the face thereof, either:

1. That the court has no jurisdiction of the offense charged therein; or, if an indictment, that the grand jury by which it was found had no authority to inquire into the offense charged, by reason of its not being within the jurisdiction of the county or judicial subdivision.

2. That it does not substantially conform to the requirements of this code.

3. That more than one offense is charged therein.

4. That the facts stated do not constitute a public offense.

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

§ 266, C. Cr. P.
am'd.

§ 8092. Requisites of demurrer. The demurrer must be in writing, signed either by the defendant or his counsel, and filed.

It must distinctly specify the grounds of the objection to the information or indictment, or it must be disregarded.

§ 8093. **Time of hearing.** Upon the demurrer being filed, § 267, C. Cr. P.
the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

§ 8094. **Judgment on demurrer.** Upon considering the de- § 268, C. Cr. P.
murrer, the court must give judgment either sustaining or overruling it, and an order to that effect must be entered upon the minutes.

§ 8095. **Effect if sustained. Further proceedings.** If the § 269, C. Cr. P.
demurrer is sustained the judgment is final upon the information or am'd.
indictment demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the demurrer is sustained may be avoided in a new information or indictment, directs another or an amended information, or an information in the place of the indictment demurred to as provided by law in case an indictment is set aside, to be filed, or that the case be submitted to the same or another grand jury.

§ 8096. **Amendment not directed, defendant discharged.** § 270, C. Cr. P.
If the court does not permit the information to be amended nor direct am'd.
that another information be filed or that the case be resubmitted as provided in the preceding section, the defendant, if in custody, must be discharged, or, if admitted to bail his bail is exonerated, or, if he has deposited money instead of bail, the money must be refunded to him.

§ 8097. **Defendant not discharged, further proceedings.** § 271, C. Cr. P.
If the court directs that another or an amended information or an am'd.
information in place of the indictment demurred to, as provided by law in case the indictment is set aside, be filed, or that the case be resubmitted to the same or another grand jury, the defendant, if already in custody, must so remain, unless he is admitted to bail, or, if already admitted to bail, or money has been deposited instead therefor, the bail or money is to be answerable for the appearance of the defendant to answer to a new information or indictment; and unless another or an amended information or an information in place of the indictment demurred to, is filed within ten days from the date of the order sustaining the demurrer, or the filing of the defendant's waiver of a preliminary examination, or a new indictment is found at the same or the next term of the district court, as the case may be, the defendant must be discharged and his bail exonerated or money refunded as provided in the preceding section.

§ 8098. **Demurrer overruled. Procedure.** If the demurrer § 272, C. Cr. P.
is overruled, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such a time as the court may allow. If he does not plead, judgment may be pronounced against him.

§ 8099. **Certain objections only taken by demurrer. Ex-** § 273, C. Cr. P.
ception. When the objections mentioned in section 8091, appear am'd.
upon the face of the information or indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the information or indictment, or that the facts stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

ARTICLE 4. — PLEA.

- § 274, C. Cr. P.
am'd. **§ 8100. Pleas classified.** There are four kinds of pleas to an information or indictment. A plea of:
1. Guilty.
 2. Not guilty.
 3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.
 4. Once in jeopardy, which may also be pleaded either with or without the plea of not guilty.
- § 275, 276,
C. Cr. P.
am'd. **§ 8101. Plea to be oral. Form of plea.** Every plea must be oral, and must be entered upon the minutes of the court, and in substantially the following form:
1. If the defendant pleads guilty: "The defendant pleads that he is guilty of the offense charged in this information (or indictment)."
 2. If he pleads not guilty: "The defendant pleads that he is not guilty of the offense charged in this information (or indictment)."
 3. If he pleads a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted, as the case may be), of the offense charged in this information (or indictment), by the judgment of the court of (naming it), rendered at (naming the place), on the day of 18....."
 4. If he pleads once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged in this information (or indictment), (specifying the time, place and court)."
- § 277, C. Cr. P.
am'd. **§ 8102. Plea of guilty only put in by defendant. Exception.** A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an information or indictment against a corporation, in which case it may be put in by counsel.
- § 278, C. Cr. P. **§ 8103. Plea may be withdrawn.** The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.
- § 279, C. Cr. P.
am'd. **§ 8104. Issues on plea of not guilty.** The plea of not guilty puts in issue every material allegation in the information or indictment.
- § 280, C. Cr. P. **§ 8105. Evidence under plea.** All matters of fact tending to establish a defense other than those specified in the third and fourth subdivisions of section 8100, may be given in evidence under the plea of not guilty.
- § 281, C. Cr. P.
am'd. **§ 8106. Acquittal. Variance. Further prosecution.** If the defendant was formerly acquitted on the ground of variance between the information or indictment and the proof, or the information or indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.
- § 282, C. Cr. P.
am'd. **§ 8107. Acquittal on merits.** When however, the defendant was acquitted on the merits, he is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the information or indictment on which he was acquitted.

§ 8108. Former acquittal or conviction. Once in jeopardy. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an information or indictment, the conviction, acquittal or jeopardy is a bar to another information or indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under the information or indictment.

§ 283, C. Cr. P.
am'd.

§ 8109. Refusal to answer. Procedure. If the defendant refuses to answer the information or indictment by demurrer or plea, a plea of not guilty must be entered.

§ 284, C. Cr. P.
am'd.

ARTICLE 5.—REMOVAL OF THE ACTION BEFORE TRIAL.

§ 8110. Action removed. Causes therefor specified. The defendant in a criminal action prosecuted by information, or indictment in any district court of this state, may be awarded a change of the place of trial, upon his petition on oath, or upon the oath of some credible person, setting forth that he has reason to believe and does believe, and the facts upon which such belief is based, that he cannot receive a fair and impartial trial in the county or judicial subdivision where said action is pending, upon any of the following grounds:

§ 285, C. Cr. P.
am'd.

1. That the prosecuting witness, or state's attorney, or other person appointed by the court to prosecute, or any person or corporation promoting said prosecution, has an undue influence over the minds of the people of the county or judicial subdivision where the action is pending; or,

2. That the people of the county or judicial subdivision are so prejudiced against the defendant or the offense of which he is accused, that he cannot have a fair and impartial trial; or,

3. That it is impossible to obtain a jury in the county or judicial subdivision that has not formed an opinion, as to the guilt or innocence of the defendant, such as would disqualify them as jurors; or,

4. That any other cause exists in the county or judicial subdivision, where the action is pending, whereby the defendant would probably be deprived of a fair and impartial trial.

§ 8111. Petition. Notice. Time to prepare. The petition must be presented at the first term of the court at which the action can be tried and before the trial is begun, or, if the action has been continued, at any time before the term to which it is continued, upon reasonable notice to the state's attorney or the attorney appointed to prosecute. The court must, upon request of the defendant or his counsel, grant the defendant at least twenty-four hours after he has been arraigned in which to prepare and present such petition.

§ 285, C. Cr. P.
am'd.

§ 8112. Court must order. Only one change. The court being satisfied that cause exists therefor, as defined in section 8110, must order a change of the place of trial to some county or judicial subdivision where the cause complained of does not exist. But the defendant shall be entitled to only one change of the place of trial.

§ 285, C. Cr. P.
am'd.

§ 8113. Duty of clerk. The order of removal must be entered upon the minutes, and the clerk must thereupon make out and transmit to the court to which the action is removed, a certified copy of the order of removal and of the records, pleadings and proceedings in

§ 286, C. Cr. P.
am'd.

the action, including the undertakings for the appearance of the defendant and of the witnesses.

§ 287, C. Cr. P.

§ 8114. **Disposition of defendant.** If the defendant is in custody, the order must provide for the removal of the defendant, by the sheriff of the county or subdivision where he is imprisoned, to the custody of the proper officer of the county or subdivision to which the action is removed, and he must be removed according to the terms of such order.

§ 288, C. Cr. P.

§ 8115. **Court may require bail.** When the court has ordered a removal of the action, it may require the accused, if the offense is then bailable, to enter into an undertaking with good and sufficient sureties to be approved by the court, in such sum as the court may direct, conditioned for his appearance in the court to which the action has been removed, on the first day of the next term thereof, and to abide the order of such court, and in default of such undertaking, a warrant shall be issued to the sheriff, or other proper officer, commanding him safely to keep, and at the proper time to convey the prisoner to the jail of the county or subdivision where he is to be tried, there to be safely kept by the jailer thereof, until discharged by due course of law.

§ 289, C. Cr. P.
am'd.

§ 8116. **Witnesses. Undertaking. Notice. Subpoena.** If the order of removal is made at a term of the court, it is notice to every person who has entered into an undertaking to appear at such term, to appear at the trial of the action before the court to which the same is removed. In other cases the witnesses must be subpoenaed as provided by this code, or the court may require the witnesses on the part of the state, to give security for their appearance before the court in which the defendant is to be tried, as provided by law in other cases.

§ 290, C. Cr. P.

§ 8117. **Trial. Original pleadings. Copies.** The court to which the action is removed must proceed to trial and judgment therein the same in all respects as if the action had been commenced in such court. If it is necessary to have any of the original pleadings, or other papers before such court, the court from which the action is removed must at any time, upon application of the state's attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

§ 8118. **Clerk. Neglect. Damages.** If the clerk of the district court neglects or refuses to perform any duty in relation to the removal of a cause, it shall be deemed a breach of his official bond and he forfeits a sum not exceeding five hundred dollars, to be recovered by an action on his official bond in the name of and for the use of the state or in the name of and for the use of the person injured, as the facts may be.

§ 8119. **Several defendants. Removal by one.** If there are several defendants in a criminal action and the place of trial is changed as to one or more of them and not as to the others, the others must be tried as if the place of trial had not been changed as to any defendant.

§ 285, C. Cr. P.
am'd.

§ 8120. **Prejudice of judge. Affidavit. Procedure.** Whenever the defendant, or a defendant, in a criminal action shall file his affidavit stating that he has good reason to believe and does believe that he cannot have a fair and impartial trial of such action on account of the prejudice of the judge of the district court in which said

action is pending, the court shall thereafter proceed in said action, as follows:

1. If the defendant, or a defendant asks for a change of the place of trial of said action on any of the grounds specified in section 8110 of this code, and also for the cause mentioned in this section, it shall be the duty of the court to order said action removed for trial to some other county or judicial subdivision in this state, as provided in this article, and to request, arrange for and procure some other judge than the one objected to, to preside at the trial of said action; or,

2. If a change is asked for only on account of the cause mentioned in this section, the court in which said action is pending may order said action removed to a county or judicial subdivision in an adjoining judicial district in which it can be conveniently and expeditiously tried before another judge, or may request, arrange for and procure the judge of another judicial district to preside at said trial in the county or judicial subdivision in which the action is pending. A change upon the ground in this section provided for must be asked before the trial is begun and not more than one change can be granted therefor; but if a trial has been had without a verdict, a change for any of the causes mentioned in this article may be had if asked for at the term at which said trial was had, and before another trial of the action is begun.

§ 8121. Prosecution. Jurisdiction of court. When the place of trial of a criminal action is changed as in this article provided, the state's attorney of the county or judicial subdivision, or other person appointed to prosecute, where the action was commenced, shall prosecute the case for the state. The court to which the action is removed for trial shall have full jurisdiction and authority to hear, try and determine the action, and upon conviction to impose the punishment prescribed by law; and the trial shall be conducted in all respects as if the action had been commenced in said court, and the costs accruing from a change of the place of trial and the costs of the trial shall be paid by the county or judicial subdivision where the offense was committed, or otherwise as provided by law. It is hereby made the duty of each judge of the several judicial districts of this state, whenever requested by another judge of the district court to preside at the trial of a criminal action, to respond as speedily as may be, and to preside at any trial to which he may be called under the provisions of this article, and all rulings, orders and acts made or done in carrying out the provisions of this article in any criminal action, shall have the same force and validity as if said action had been tried or said rulings, orders and acts made or done in the judicial district for which such judge was elected.

§ 8122. Removal by state. Procedure. The state's attorney, on behalf of the state, may also apply in a similar manner for a removal of the action, and the court being satisfied that it will promote the ends of justice, may order such removal upon the same terms and to the same extent as are provided in this article, and the proceedings on such removal shall be in all respects as above provided.

§ 291, C. Cr. P.
am'd.

ARTICLE 6.—THE MODE OF TRIAL.

- § 292, C. Cr. P. am'd. **§ 8123. Issue of fact.** An issue of fact arises:
1. Upon a plea of not guilty.
 2. Upon a plea of former conviction or acquittal of the same offense; or,
 3. Upon a plea of once in jeopardy.
- § 293, C. Cr. P. am'd. **§ 8124. How issue of fact tried.** Issues of fact must be tried by a jury, unless a trial by a jury is waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court and entered on the minutes.
- § 294, C. Cr. P. am'd. **§ 8125. Presence of defendant.** If the information or indictment is for a felony, the defendant must be personally present at the trial; but if it is for a misdemeanor, the trial may be had in the absence of the defendant; if his presence is necessary for any purpose, the court may, upon application of the state's attorney or person appointed to prosecute, by an order or warrant, require the personal attendance of the defendant at the trial.
- § 8126. Time to prepare for trial.** After his plea the defendant, if he requests it, is entitled to at least one day to prepare for trial.

ARTICLE 7.—FORMATION OF THE TRIAL JURY.

- § 295, C. Cr. P. **§ 8127. Who jurors in criminal actions.** The jurors duly drawn and summoned for the trial of civil actions, are also the jurors for the trial of criminal actions.
- § 296, C. Cr. P. **§ 8128. How trial jury formed.** Trial juries for criminal actions may also be formed in the same manner as trial juries in civil actions.
- § 297, C. Cr. P. **§ 8129. Clerk to prepare ballots.** At the opening of the court the clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same cannot be seen, and must deposit them in a sufficient box.
- § 298, C. Cr. P. **§ 8130. Parties may require names to be called.** When the case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court in its discretion may order that an attachment issue against those who are absent; but the court may, in its discretion, wait or not for the return of the attachment.
- § 299, C. Cr. P. **§ 8131. Manner of drawing jury.** Before the name of any juror is drawn, the box must be closed and shaken so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box.
- § 300, C. Cr. P. **§ 8132. Disposition of ballots.** When the jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.
- § 301, C. Cr. P. **§ 8133. Same. Jury discharged.** After the jury are so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

§ 8134. **Juror absent. Ballot.** If a juror is absent when his name is drawn, or is set aside or excused from serving on the trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn. § 302, C. Cr. P.

§ 8135. **All jurors not appearing. Procedure.** When a jury has been duly summoned, if, upon calling the cause for trial, twenty-four of the jurors summoned do not appear, the court may, in its discretion, order the sheriff to summon from the body of the county or subdivision, as many persons as it may think proper, at least sufficient to make twenty-four jurors, from whom a jury for the trial of the cause may be selected. § 303, C. Cr. P.

§ 8136. **Names. Ballots. Deposited in box.** The names of the persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box mentioned in section 8129. § 304, C. Cr. P.

§ 8137. **Drawing the jury.** The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury. § 305, C. Cr. P.

§ 8138. **Number of jury. How sworn.** The jury consists of twelve men, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between the state of North Dakota and the defendant whom they shall have in charge, and a true verdict to give according to the evidence, which verdict must be unanimous. § 306, C. Cr. P.

§ 8139. **Number failing, others summoned.** If a sufficient number cannot be obtained from the box to form a jury, the court may, as often as is necessary, order the sheriff to summon from the body of the county or subdivision, so many persons qualified to serve as jurors as it deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and so many of them not excused or discharged, as may be necessary to complete the jury, must be impaneled and sworn. § 307, C. Cr. P.

§ 8140. **Juror may affirm.** Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words, "so help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury." § 308, C. Cr. P.

ARTICLE 8.—POSTPONEMENT OF THE TRIAL.

§ 8141. **Either party may have for cause.** When a criminal action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, direct the trial to be postponed to another day in the same term or to the next term. Any cause that would be considered a good one for a postponement in a civil action, is sufficient in a criminal action, whether urged by the state or by the defendant. § 309, C. Cr. P.

CHAPTER 10.

PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

ARTICLE 1. — CHALLENGING THE JURY.

- § 310, C. Cr. P. **§ 8142. Challenges classed.** A challenge is an objection made to the trial jurors and is of two kinds:
1. To the panel.
 2. To an individual juror.
- § 311, C. Cr. P. **§ 8143. When several defendants must join.** When several defendants are tried together they cannot sever their challenges, but must join therein.
- § 312, C. Cr. P. **§ 8144. Panel defined.** The panel is a list of jurors returned by a sheriff, to serve at a particular court, or for the trial of a particular action.
- § 313, C. Cr. P. **§ 8145. Challenge to panel.** A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.
- § 314, C. Cr. P. **§ 8146. Causes for.** A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.
- § 315, C. Cr. P. **§ 8147. When taken.** A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.
- § 316, C. Cr. P. **§ 8148. Sufficiency of facts controverted. Procedure.**
 am'd. If the sufficiency of the facts alleged as a ground of challenge is controverted by the adverse party, he may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts therein alleged to be true.
- § 317, C. Cr. P. **§ 8149. Facts denied, procedure.** If, on the exception, the court deems the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.
- § 318, C. Cr. P. **§ 8150. Trial of question of fact.** If the facts alleged as the grounds of the challenge are denied, the denial may, in like manner, be oral and must be entered upon the minutes of the court, and the court must proceed to try the question of fact.
- § 319, C. Cr. P. **§ 8151. Officers may be examined.** Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.
- § 320, C. Cr. P. **§ 8152. Challenge taken for officer's bias.** When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

§ 8153. Challenge allowed. Jury discharged. If upon an exception to the challenge, or a denial of the facts, the challenge is allowed, the court must discharge the jury, and another jury can be summoned for the same term forthwith from the body of the county; or, the judge may order a jury to be drawn and summoned in the regular manner. If it is disallowed, the court must direct the jury to be impaneled. § 321, C. Cr. P.

§ 8154. Challenge of individual juror. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror, he must do so when the juror appears, and before he is sworn. § 322, C. Cr. P.

§ 8155. Nature of challenge. A challenge to an individual juror is either: § 323, C. Cr. P.

1. Peremptory; or,
2. For cause.

§ 8156. Taken before sworn. It must be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed. § 324, C. Cr. P.

§ 8157. Peremptory challenge. A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him. § 325, C. Cr. P.

§ 8158. Defendant's challenges. In all criminal cases the defendant is entitled to the following challenges: § 326, C. Cr. P. am'd.

1. For capital offenses the defendant may challenge peremptorily twenty-five jurors.

2. In prosecutions for offenses punishable by imprisonment in the penitentiary, fifteen jurors.

3. In other prosecutions, ten jurors.

§ 8159. Prosecution. Challenges. The prosecuting attorney in capital cases may challenge peremptorily six jurors; in other cases, three jurors. § 327, C. Cr. P.

§ 8160. Challenge for cause. A challenge for cause may be taken either by the state or the defendant. § 328, C. Cr. P.

§ 8161. For cause classed. It is an objection to a particular juror, and is either: § 329, C. Cr. P.

1. General, that the juror is disqualified from serving in any case or trial; or,

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

§ 8162. General causes of challenge specified. General causes of challenges are: § 330, C. Cr. P.

1. A conviction for felony.

2. A want of any of the qualifications prescribed by law, to render a person a competent juror, including a want of knowledge of the English language as used in the courts.

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

§ 8163. Particular causes of challenge specified. Particular causes of challenge are of two kinds: § 331, C. Cr. P.

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

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

§ 332, C. Cr. P.
am'd.

§ 8164. Matters constituting implied bias specified. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or relationship to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

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

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

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

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

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

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

§ 333, C. Cr. P.

§ 8165. Exemption is not cause. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

§ 334, C. Cr. P.
am'd.

§ 8166. How challenge taken. Cause stated. In a challenge for implied bias, one or more of the causes stated in section 8164 must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section 8163 must be alleged. The challenge may be oral, but must be entered upon the minutes of the court.

§ 335, C. Cr. P.

§ 8167. Exception to the challenge. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as prescribed in section 8148 except that if the exception is allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge.

§ 336, C. Cr. P.

§ 8168. How tried, by the court. All challenges, whether to the panel or to individual jurors, shall be tried by the court, without the aid of triers.

§ 337, C. Cr. P.

§ 8169. Juror challenged, a witness. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

§ 8170. Other witnesses. Rules of evidence. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of testimony, on the trial of the challenge. § 338. C. Cr. P.

§ 8171. Court must allow or disallow challenge. On the trial of a challenge, the court must either allow or disallow the challenge, and direct an entry accordingly upon the minutes. § 339. C. Cr. P.

§ 8172. Order of taking challenge. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the state, and each party must exhaust all his challenges before the other begins. § 340. C. Cr. P.

§ 8173. Order of challenges for cause. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class: § 341. C. Cr. P.

1. To the panel.
2. To an individual juror for a general disqualification.
3. To an individual juror for implied bias.
4. To an individual juror for actual bias.

§ 8174. Peremptory challenges. If all challenges on both sides are disallowed, either party, first the state and then the defendant, may take a peremptory challenge, unless the party's peremptory challenges are exhausted. § 342. C. Cr. P.

ARTICLE 2.—THE TRIAL.

§ 8175. Order of trial. The jury having been impaneled and sworn, the trial must proceed in the following order: § 343. C. Cr. P. am'd.

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

2. The state's attorney or other counsel for the state, must open the case and offer the evidence in support of the information or indictment.

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

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

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

6. The judge must then charge the jury.

§ 8176. Charging the jury. Procedure. In charging the jury, the court shall only instruct as to the law of the case, and all instructions must first be reduced to writing, unless by consent of both parties entered in the minutes, the instructions are given orally and taken down by the stenographer of the court, in shorthand. Either party may request instructions to the jury. Each instruction so requested must be written on a separate sheet of paper, and may be given or refused by the court, and the court shall write on the margin of such requested instructions which he does not give the § 343. C. Cr. P. § 1. c. 84, 1893. am'd.

- word "refused," and all instructions asked for by either party shall be given or refused by the court without modification or change, unless modified or changed by the consent of the counsel asking the same.
- § 1. c. 84, 1893, am'd. **§ 8177. Same.** All instructions given to the jury must be read to them by the court without disclosing to them whether such instructions were requested or not, and must be signed by the judge and may be delivered to the jury, and be taken by them in their retirement and returned into court with the verdict. But when oral instructions are given the jury shall not take any part of the charge in their retirement unless so ordered by the court.
- § 1. c. 84, 1893, am'd. **§ 8178. Instructions. Stenographer. Exceptions.** Upon the close of the trial all instructions given or refused together with those prepared by the court, if any, must be filed with the clerk, and except as otherwise provided in the next section shall be deemed excepted to by the defendant. If the charge of the court, or any part thereof is given orally, the same must be taken down by the official stenographer and shall be deemed excepted to by the defendant, and the same as soon as may be after the trial must be written out at length and filed with the clerk of the court by the stenographer thereof; provided, that in case the defendant is acquitted by the jury the oral instructions need not be transcribed or filed with the clerk. But exceptions in writing to any of the instructions of the court in any manner given, or the refusal of the court to give instructions requested, may be filed by the defendant at his discretion, with the clerk of the court within twenty days after the instructions are all filed as herein provided. The stenographer of the court shall receive for writing out the oral instructions of the court the same fees as for making transcripts.
- § 1. c. 84, 1893, am'd. **§ 8179. Charge. Exceptions before given.** The court may in its discretion, submit the written instructions which it proposes to give to the jury, to the counsel in the case for examination, and require such counsel after a reasonable examination thereof, to designate such parts thereof as he may deem objectionable, and such counsel must thereupon designate such parts of such instructions as he may deem improper and thereafter only such parts of said written instructions so designated shall be deemed excepted to, or subject to exception.
- § 344, C. Cr. P. **§ 8180. Order specified may be changed.** When the state of the pleadings requires it, or in any other case, for good reasons and in the sound discretion of the court, the order of trial and argument prescribed in section 8175 may be departed from.
- § 345, C. Cr. P. **§ 8181. Court to decide law.** The court must decide all questions of law which arise in the course of the trial.
- § 346, C. Cr. P. **§ 8182. Libel. Jury determine law and fact.** On the trial of an information or indictment for libel, the jury have the right to determine the law and the fact.
- § 347, C. Cr. P. **§ 8183. Other offenses. Determine only facts.** On the trial of an information or indictment for any other offense than libel, questions of law are to be decided by the court, and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.
- § 348, C. Cr. P. **§ 8184. Counsel. Argument restricted.** If the information or indictment is for an offense punishable with death, three counsel on each side may argue the case to the jury. If it is any other offense

the court may, in its discretion, restrict the argument to one counsel on each side.

§ 8185. Presumption of innocence. Reasonable doubt. § 349, C. Cr. P.

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

§ 8186. Doubt as to degree. When it appears that a defendant has committed a public offense and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only. § 350, C. Cr. P.

§ 8187. Defendants tried separately. When two or more defendants are jointly charged with a felony in a criminal action, any defendant requiring it must be tried separately. In other cases defendants jointly prosecuted may be tried separately or jointly, in the discretion of the court. § 351, C. Cr. P.

§ 8188. Defendant discharged to testify. When two or more persons are included in the same information or indictment, the court may, at any time before the defendants have gone into their defense, on the application of the state's attorney, direct any defendant to be discharged from the information or indictment, that he may be a witness for the state. § 352, C. Cr. P.

§ 8189. Same. Witness for codefendant. When two or more persons are included in the same information or indictment, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his codefendant. § 353, C. Cr. P. am'd.

§ 8190. Such discharge an acquittal. The discharge of a defendant under either of the last two sections is an acquittal of the offense charged in the information or indictment or any offense for which he might have been found guilty thereunder, and is a bar to another prosecution therefor.

§ 8191. Defendant witness in own behalf. In the trial of a criminal action or proceeding before any court or magistrate of this state, whether prosecuted by information, indictment, complaint or otherwise, the defendant shall, at his own request and not otherwise, be deemed a competent witness; but his neglect or refusal to testify shall not create or raise any presumption of guilt against him; nor shall such neglect or refusal be referred to by any attorney prosecuting the case, or considered by the court or jury before whom the trial takes place. § 1, c. 16, 1879. am'd.

§ 8192. Rules of evidence. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this code. § 354, C. Cr. P.

§ 8193. Treason. Witnesses. Overt acts. Upon a trial for treason the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon his confession in open court; nor can evidence be admitted of an overt act not expressly charged in the information or indictment; nor can the defendant be convicted unless one or more overt acts are expressly charged therein.

§ 8194. Conspiracy. Overt acts. Proof. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the information or indictment, § 355, C. Cr. P. am'd.

nor unless one or more of the acts alleged are proved; but any other overt act, not alleged in the information or indictment may be given in evidence.

§ 356, C. Cr. P.

§ 8195. Accomplice. Evidence. Corroboration. A conviction cannot be had upon the testimony of an accomplice unless he is corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense, or the circumstances thereof.

§ 357, C. Cr. P.

§ 8196. Evidence of false pretense. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, is in writing, either subscribed by, or in the handwriting of the defendant, or unless the pretense is proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to a prosecution for falsely representing or personating another, and in such assumed character, marrying or receiving money or property.

§ 358, C. Cr. P.
am'd.

§ 8197. Evidence of abortion and seduction. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty years for the purpose of prostitution, or aiding or assisting therein, or for having, under promise of marriage, seduced and had illicit connection with an unmarried female, under twenty years of age, of previous chaste character, the defendant cannot be convicted upon the testimony of the person injured unless she is corroborated by other evidence.

§ 359, C. Cr. P.
am'd.

§ 8198. Mistake in charge. Other proceedings. When it appears, at any time before verdict or judgment that a mistake has been made in charging the proper offense, the defendant must not be discharged, if there appears good cause to detain him in custody; but the court must commit him, or require him to give bail for his appearance to answer to the offense, and may also require the witnesses to give bail for their appearance. The provisions of section 8097 of this code as to the manner and time of prosecution, so far as applicable, shall govern the further proceedings under this section.

§ 360, C. Cr. P.
am'd.

§ 8199. Same. Not former acquittal nor once in jeopardy. Upon the trial of an information filed or indictment found, under the provisions of the last section, neither a plea of former acquittal nor of once in jeopardy shall be sustained by the fact of the discharge of the jury on the first information or indictment.

§ 361, C. Cr. P.
am'd.

§ 8200. New proceedings. Original charge. If a new information is not filed or a new indictment found within the times limited in section 8097 and the sections therein referred to, of this code, the court must again proceed to try the defendant on the original charge.

§ 362, C. Cr. P.
am'd.

§ 8201. Want of jurisdiction appearing, jury discharged. The court may direct the jury to be discharged, when it appears that it has not jurisdiction of the offense, or that the facts charged in the

information or indictment do not constitute an offense punishable by law.

§ 8202. **Disposition of accused.** If the jury is discharged because the court has not jurisdiction of the offense charged, and it appears that it was committed out of the jurisdiction of this state, the defendant must be discharged, unless the court orders that he be detained for a reasonable time, to be specified in the order, to enable the state's attorney to communicate with the chief executive officer of the country, state, territory or district where the offense was committed. § 363, C. Cr. P. am'd.

§ 8203. **Same. Bail.** If the offense was committed within the jurisdiction of another county of this state, the court may direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest, or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking to surrender himself upon the warrant if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking. § 364, C. Cr. P. am'd.

§ 8204. **Clerk. Papers. Certified copies sent to proper county.** In the cases provided for in the last section, the clerk must forthwith transmit a certified copy of the information or indictment and of all the papers filed in the action, to the proper county, the expense of which transmission is chargeable to that county. § 364, C. Cr. P. am'd.

§ 8205. **When accused discharged.** If the defendant is not arrested on a warrant from the proper county, he must be discharged from custody, or his bail in the action be exonerated, or money deposited instead of bail refunded, as the case may be, and the sureties in the undertaking, as mentioned in section 8203 must be discharged. § 365, C. Cr. P. am'd.

§ 8206. **Proceedings if accused arrested.** If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate. § 366, C. Cr. P. am'd.

§ 8207. **Court must discharge accused. Exception.** If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail that his bail be exonerated, or if he has deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new information or indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct the state's attorney to file a new information, or (if an information cannot be sooner legally filed) direct that the case be submitted to the same or another grand jury; and the provisions of sections 8087 or 8097 of this code, so far as applicable, as to the time and manner of the prosecution, shall govern the further proceedings under this section. § 367, C. Cr. P. am'd.

§ 8208. **Court may advise jury to acquit.** If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the

defendant. But the jury are not bound by the advice, nor can the court, for any cause, prevent the jury from giving a verdict.

§ 369, C. Cr. P.

§ 8209. Jury may view place. When, in the opinion of the court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the court for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

§ 370, C. Cr. P.

§ 8210. Juror knowing fact. Witness. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare it in open court during the trial. If, during the retirement of a jury, a juror declares a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

§ 371, C. Cr. P.
am'd.

§ 8211. Custody and conduct of jury. The jurors sworn to try a criminal action, may, at any time before the cause is submitted to the jury, in the discretion of the court, be permitted to separate, or be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

§ 372, C. Cr. P.

§ 8212. Court must admonish jury. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with any one else on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

§ 373, C. Cr. P.

§ 8213. Juror becoming sick. Procedure. If, before the conclusion of a trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterward impaneled.

§ 374, C. Cr. P.

§ 8214. Murder. Burden of proof. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

§ 375, C. Cr. P.

§ 8215. Bigamy, proof of marriage. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of this state proof of that fact, accompanied with proof of cohabitation thereafter in this state is sufficient to sustain the charge.

§ 376, C. Cr. P.

§ 8216. Forgery. Proof on trial. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not

necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

§ 8217. **Charge to jury. Requisites.** In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it states the testimony of the case, it must in addition inform the jury that they are the exclusive judges of all questions of fact. Either party may present to the court any written charge, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and refused the court must indorse or sign its decision. § 377, C. Cr. P. am'd.

§ 8218. **Jury after charge. Refreshments.** After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, without refreshment except water unless otherwise ordered by the court, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court. § 378, C. Cr. P. am'd.

§ 8219. **When conviction or acquittal a bar.** When the defendant has been convicted or acquitted upon an information or indictment for an offense consisting of different degrees, the conviction or acquittal is a bar to another information or indictment for the offense charged, or for any lower degree of that offense, or for an offense necessarily included therein.

§ 8220. **Defendant may be committed.** When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly. § 379, C. Cr. P.

§ 8221. **Substitute for state's attorney.** If the state's attorney fails, or is unable to attend at the trial, the court must appoint some attorney at law to perform the duties of the state's attorney on such trial. § 380, C. Cr. P.

ARTICLE 3.—CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

§ 8222. **Room provided for jury.** A room must be provided by the board of commissioners of a county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the commissioners neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge. § 381, C. Cr. P.

§ 8223. **Food and lodging for jury.** While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, upon the order of the court at the expense of the county, with suitable and sufficient food and lodging. § 382, C. Cr. P.

- § 383, C. Cr. P.
am'd. **§ 8224. What papers jury may take.** Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them such parts of the written instructions as the court may direct and notes of the testimony, or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.
- § 384, C. Cr. P. **§ 8225. Disagreement. Further instructions.** After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the state's attorney and the defendant or his counsel, or after they have been called.
- § 385, C. Cr. P. **§ 8226. Juror sick, jury discharged.** If, after the retirement of the jury, one of them becomes so sick as to prevent the continuance of his duty, or any other accident or cause occurs to prevent their being kept together for deliberation, the jury may be discharged.
- § 386, C. Cr. P. **§ 8227. Disagreement, jury discharged.** Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deems proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.
- § 387, C. Cr. P. **§ 8228. Verdict prevented, cause retried.** In all cases when a jury is discharged or prevented from giving a verdict, by reason of an accident or other cause, except when the defendant is discharged from the information or indictment during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term, as the court may direct.
- §§ 388, 389,
C. Cr. P.
am'd. **§ 8229. Adjournment during absence of jury.** While the jury are absent the court may adjourn from time to time as to other business, but it is nevertheless deemed open for every purpose connected with the cause submitted to them, until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

ARTICLE 4. — THE VERDICT.

- § 390, C. Cr. P. **§ 8230. Return of verdict.** When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.
- § 391, C. Cr. P. **§ 8231. Presence of defendant. Felony. Misdemeanor.** If the information or indictment is for a felony, the defendant must, before the verdict is received, appear in person. If it is for a misdemeanor, the verdict may, in the discretion of the court, be rendered in his absence.

§ 8232. **Procedure when jury appear.** When the jury appear, they must be asked, by the court or the clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same. § 392, C. Cr. P.

§ 8233. **General or special verdict. Libel.** The jury may either render a general verdict, or when they are in doubt as to the legal effect of the facts proved, they may, except upon an information or indictment for libel, find a special verdict. § 393, C. Cr. P.

§ 8234. **Oral or in writing. Preparation.** The verdict of the jury may be rendered orally or in writing as the jury may elect, unless the court, at the time the case is submitted to the jury, requires that it be rendered in writing. When the court so requires, the clerk of the court shall, under the direction of the court, provide blank verdicts of suitable form for any verdict the jury may return in the action and said blank verdicts shall be taken by the jury when it retires.

§ 8235. **General verdicts. Contents.** A general verdict upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the information or indictment. Upon a plea of a former conviction or acquittal of the same offense, or once in jeopardy, it is either "for the state," or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the information or indictment and the proof, the verdict must be "not guilty by reason of variance between the information (or indictment) and proof." § 394, C. Cr. P.

§ 8236. **Special verdict to be written.** A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by the evidence and not the evidence to prove them, and the conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them. § 395, C. Cr. P.

§ 8237. **Special verdict, how rendered.** The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury, and agreed to by them before they are discharged. § 396, C. Cr. P.

§ 8238. **Form of special verdict.** The special verdict need not be in any particular form, but is sufficient if it presents intelligibly the facts found by the jury. § 397, C. Cr. P.

§ 8239. **Argument of special verdict.** The special verdict may be brought to argument by either party, upon two days' notice to the other, at the same or another term of the court. § 398, C. Cr. P.

§ 8240. **Judgment upon special verdict.** The court must give judgment upon the special verdict as follows: § 399, C. Cr. P.
 am'd.

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

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

§ 400, C. Cr. P.
am'd.

§ 8241. When new trial must be ordered. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence, as established to their satisfaction, the court must order a new trial.

§ 401, C. Cr. P.
am'd.

§ 8242. Degree must be found. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty. Whenever a verdict of guilty is rendered against the accused upon a prosecution for homicide, the jury must find the degree thereof and determine by their verdict the punishment to be inflicted within the limits prescribed by law.

§ 8243. Finding on charge of previous conviction. Whenever the fact of a previous conviction of another offense is charged in the information or indictment, the jury if they find a verdict of guilty of the offense with which the defendant is charged, must also, unless the answer of defendant admits the charge, find whether or not he has suffered such previous conviction. In addition to the verdict of "guilty" the verdict of the jury upon a charge of previous conviction may be "we also find the charge of previous conviction true," or "we also find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction.

§ 402, C. Cr. P.

§ 8244. Any degree may be found. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the information or indictment or of an attempt to commit the offense.

§ 403, C. Cr. P.

§ 8245. Several defendants. Part convicted. On an information or an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

§ 8246. Verdict returned. Duty of court. Punishment. If the jury return a verdict of guilty against the accused, the court must before it is accepted ascertain whether it conforms to the law of the case. If in the opinion of the court, the verdict does not conform to the requirements of the law of the case, the court must with proper instructions as to the error, direct the jury to reconsider the verdict, and the verdict cannot be accepted or recorded until it is rendered in proper form. But, if the punishment imposed by the jury in the verdict, in cases where the jury are authorized by law to determine the punishment, is not in conformity to the law of the case in that regard, the court may proceed as follows:

1. If the punishment imposed by the jury in the verdict is under the limit prescribed by law, for the offense of which the defendant is found guilty, the court may receive the verdict and thereupon render judgment and pronounce sentence for the lowest limit prescribed by law in such cases; or,

2. If the punishment imposed by the jury in the verdict is greater than the highest limit prescribed by law, for the offense of which the defendant is found guilty, the court must disregard the excess and render judgment and pronounce sentence according to the highest limit prescribed by law in the particular case.

§ 8247. Court may reduce punishment. The court has the power in all cases of conviction, to reduce the extent or duration of the punishment imposed by a jury, if in its opinion, the conviction is proper, and the punishment imposed is greater than under the circumstances of the case ought to be inflicted.

§ 8248. Jury reconsider verdict. Acquittal. When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it. § 404, C. Cr. P.

§ 8249. Same. Informal verdict. If the jury render a verdict which is neither a general nor a special verdict, the court may, with proper instructions as to the law, direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court. § 405, C. Cr. P.

§ 8250. Judgment if jury persist. Acquittal. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment is given against him on a special verdict. § 406, C. Cr. P.

§ 8251. Jury may be polled. Procedure. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if anyone answers in the negative, the jury must be sent out for further deliberation. § 407, C. Cr. P.

§ 8252. Clerk to record verdict. Dissent. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and must read it to the jury and inquire of them whether it is their verdict. If any juror disagrees, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case. § 408, C. Cr. P.

§ 8253. Judgment. Acquittal. Accused discharged. Exception. If the judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given, except that when the acquittal is for a variance between the proof and the information or indictment, which may be obviated by a new information or indictment, the court may order his detention to the end that a new information or indictment may be preferred in the same manner and with like effect as provided in section 8097 and the sections of this code therein referred to. § 409, C. Cr. P. am'd.

§ 8254. Verdict. Guilty. Procedure. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody; or if on bail, he may be committed to the proper officer of the county, to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if

money is deposited instead of bail, it must be refunded to the defendant.

§ 411, C. Cr. P.

§ 8255. When defense insanity, and jury acquits. If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.

CHAPTER 11.

PROCEEDINGS AFTER VERDICT AND BEFORE JUDGMENT.

ARTICLE 1.—STATEMENT OF THE CASE AND EXCEPTIONS.

§ 8256. Statement of the case defined. A statement of the case is a statement, in writing setting forth or showing particularly, one or more of the rulings, decisions or acts excepted to in an action or proceeding, together with the facts and circumstances of the ruling, decision or act and the exception thereto, and settled, certified and filed as provided in this article.

§ 8257. Same. Office of. The office of a statement of the case is to make such parts of the proceedings or of the evidence in an action, appear of record as otherwise would not so appear.

§ 413, C. Cr. P.
am'd.

§ 8258. Same. By whom settled. Where filed. Except as otherwise provided in this chapter, a statement containing the exceptions must be settled and certified by the judge who presided at the trial, and filed with the clerk of the district court of the county in which the action was tried.

§ 8259. Matters deemed excepted to by either party. The decision of the court, in a criminal action or proceeding upon a matter of law is deemed excepted to by either party in the following cases:

1. In granting or refusing a motion to set aside an information or indictment.
2. In allowing or disallowing a demurrer to an information or indictment.
3. In granting or refusing a motion in arrest of judgment.
4. In granting or refusing a motion for a new trial.
5. In making or refusing to make an order after judgment affecting any substantial right of the parties.

§ 8260. Matters deemed excepted to by the defendant. The decision of the court in a criminal action or proceeding upon a matter of law is deemed excepted to by the defendant in the following cases:

1. In refusing to grant a motion for a change of the place of trial.
2. In refusing to postpone the trial on motion of the defendant.

3. In charging or instructing the jury upon the law, upon the trial of the issue, except as otherwise provided in section 8179 of this code.

§ 8261. Clerk to enter orders. Certified copies. It shall be the duty of the clerk of the district court in which any criminal action or proceeding is pending or tried, to enter carefully and correctly in the minutes of such court, each ruling or decision of the court, made in open court, upon any matter by section 8259 and subdivisions 1 and 2 of section 8260 of this article declared to be deemed excepted to, and a certified copy of any or all such entries shall be and become a part of the record of said action.

§ 8262. Matters defendant may except to. Upon a trial of a criminal action or proceeding, exceptions may be taken by the defendant to a decision of the court: § 412, C. Cr. P.
am'd.

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

2. In admitting or rejecting witnesses or testimony, on the trial of a challenge of a juror for actual bias.

3. In admitting or rejecting witnesses or evidence or in deciding any matter of law, not purely discretionary, on the trial of the issue.

§ 8263. Code construed. Nothing in this code contained is to be construed so as to deprive either party of the right of excepting to any action or decision of the court in a criminal action or proceeding, which affects any other material or substantial right of either party, whether before or after the trial, or on such trial.

§ 8264. Exceptions. Settled at trial. In all cases when the court is proceeding without a stenographer, the exceptions must be settled and certified, at the trial, unless the court otherwise directs. If the exceptions are settled at the trial, the point of the exception must be particularly stated in writing and delivered to the court, and must immediately be corrected or added to, until it is made conformable to the truth. The exceptions so settled and certified shall constitute a statement of the case. § 414, C. Cr. P.
am'd.

§ 8265. Same. Not settled at trial. If the exceptions are not settled at the trial and in all cases when the testimony is taken down by an official stenographer, a statement of the case containing the exceptions must be prepared and served within thirty days thereafter, on the state's attorney or other person appointed to prosecute, who may within five days thereafter, serve on the defendant or his attorney, amendments thereto. The defendant may then, within five days, serve the state's attorney, or other person appointed to prosecute with a notice to appear before the judge who presided at the trial at a specified place and time, not less than five nor more than ten days thereafter, to have the statement of the case settled. At the place and time appointed, or as soon thereafter as the same can be done, the judge must settle the statement of the case, and certify the same to be correct, and thereupon the same must be filed with the clerk of the district court of the county in which the action was tried. The judge who presided at the trial may settle, and certify a statement of the case after as well as before he ceases to be such judge. § 415, C. Cr. P.
am'd.
§ 5, c. 21, 1887.

§ 8266. When supreme court may settle statement. If the judge who presided at the trial in any case refuses to allow an exception in accordance with the facts, or to settle or certify a statement of the case or has died or removed from the state, the party desiring the statement settled may apply by petition to the supreme § 416, C. Cr. P.
§ 1, c. 20, 1885.
am'd.

court at any term thereof, or to any judge of said court in vacation, to settle and approve the same. The application may be made in the manner and under such regulations as the court may prescribe by order or in its rules, or as may be required by the judge of said court to whom application is made. The statement of the case or any exception when allowed, must be certified by the chief justice of the court (if application is made to the court) or by the judge allowing the same, (when made to a judge), as correct, and filed with the clerk of the district court of the county in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who presided at the trial of the action. In all cases when there is no provision of law governing the allowance and settlement of statements or exceptions, the same shall be allowed, settled and certified as directed in this section.

§ 417, C. Cr. P.
am'd.

§ 8267. Time may be extended. The times for preparing the statement of the case, or the amendments thereto, or for settling and certifying the same, may be extended before or other times fixed, after they have elapsed, by the agreement of the parties or by the judge who presided at the trial, or in the cases provided for in section 8266 of this code, by the supreme court, or by a judge thereof.

§ 418, C. Cr. P.
am'd.

§ 8268. What statement to contain. The statement of the case must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, and the judge must upon the settlement of the statement, whether agreed to by the parties or not, strike out all other matters therein. No particular form of exception is required, but the objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more; only the substance of the stenographer's notes of the evidence shall be stated; documents on file in the action or proceeding may be copied, or the substance thereof stated, or a reference thereto sufficient to identify them may be made.

§ 8269. Instructions. Exceptions. Record. Errors. The instructions requested by the defendant and refused, or by the prosecutor and given, and all the instructions given to the jury, by the court in writing, or orally and written out by the stenographer of the court and filed with the clerk, except as otherwise provided in section 8179 of this code, are deemed excepted to, and need not be embodied in the statement of the case, but the same and each of them with the indorsements, if any, showing the action of the court thereon, form a part of the record of the action. The decision of the court upon any matters of law in this article declared to be deemed excepted to, need not be embodied in any statement of the case, and forms a part of the record of the action. Any statement of the case or exception, settled, certified and filed as provided in this article also forms a part of the record of the action. Any error committed by the court in or by any decision, ruling, instruction or other act and appearing in the record of the action may be taken advantage of upon a motion for a new trial or in the supreme court on an appeal.

ARTICLE 2. — NEW TRIALS.

§ 422, C. Cr. P.

§ 8270. New trial defined. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given. The granting of a new trial places the parties in the

same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to, either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the information or indictment.

§ 8271. Causes for granting new trial. When a verdict has been rendered against the defendant, the court in which the trial was had, may upon his application, grant a new trial in the following cases, only:

§ 423, C. Cr. P.
§ 1, c. 115, 1885.
am'd.

1. When the trial has been had in his absence, if the information or indictment is for a felony.

2. When the jury has received out of court any evidence other than that resulting from a view of the premises, or any communication, document or paper referring to the case.

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

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

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial or has done or allowed any act in the action prejudicial to the substantial rights of the defendant.

6. When the verdict is contrary to law or clearly against the evidence.

7. When new evidence is discovered material to the defense, and which the defendant could not, with reasonable diligence, have discovered and produced at the trial.

When the application for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing, in support thereof, the affidavits of the persons by whom such evidence is expected to be given; and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable. But the court may, when the affiants are residents of this state, compel their personal attendance before it; and they may be examined and cross-examined under oath, touching the matters set forth in their affidavits.

§ 8272. Application for new trial. Notice. The application for a new trial must be made upon not less than one nor more than five days' written notice, and if based upon any of the grounds mentioned in subdivisions 2, 3, 4 and 7, of the last section, such written notice must be served and filed within thirty days after the discovery of the facts upon which the party relies in support of his application; and in all other cases the notice must be served and filed within ten days after the rendition of the verdict, or within such further or other time as the court may allow or fix.

§ 2, c. 115, 1885.
am'd.

§ 8273. Same. Affidavits. Upon minutes of the court. The application for a new trial, if made for any of the causes mentioned in subdivisions 1, 2, 3, 4 and 7, of section 8271 must be based upon affidavits which must be filed before the notice is served; in all other cases the application may be made upon the minutes of the court or upon the record of the action and the notice must designate generally the grounds upon which the motion will be made as near as may be

§ 2, c. 115, 1885.
am'd.

in the language of section 8271. When the application is made upon the minutes of the court, the notice must specify particularly the errors relied upon and upon the hearing reference may be had to any and all papers on file in the action, the clerk's minutes and the stenographer's notes of the testimony. The application must be heard on the day specified in the notice, or as soon as practicable thereafter. In all cases when the notice is served before judgment, the court may in its discretion, stay all further proceedings in the action until such application is disposed of. When the application is made upon the minutes of the court and a statement of the case becomes necessary, the draft thereof, and amendments thereto may be proposed and served and the statement settled, certified and filed in the manner and times and after the notices in this article specified. If a review of the decision upon such application is sought on appeal, the errors specified in the notice must be embodied in the statement as settled and certified.

§ 2, c. 115, 1885.
am'd.

§ 8274. Same. Time within which made. The application for a new trial, except in case of a sentence of death, must be made before the time for an appeal has elapsed. In case of a sentence of death, the application may be made at any time before the execution.

ARTICLE 3.—ARREST OF JUDGMENT.

§ 425, C. Cr. P.
am'd.

§ 8275. Motion in arrest of judgment defined. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of former conviction or acquittal or once in jeopardy. It may be founded on any of the defects in the information or indictment mentioned in section 8091, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

§ 426, C. Cr. P.
am'd.

§ 8276. Court, without motion, may arrest judgment. The court, may also, on its own view of any of these defects, arrest the judgment without motion. The effect of allowing a motion in arrest of judgment, is to place the defendant in the same situation in which he was before the information was filed or the indictment found.

§ 427, C. Cr. P.
am'd.

§ 8277. Judgment arrested. Further prosecution. Acquittal. If, from the evidence in a trial, there is reason to believe the defendant guilty, and a new information or indictment can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new information or indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or if admitted to bail, his bail must be exonerated, or if money has been deposited instead of bail, it must be refunded, and the arrest of judgment shall operate as an acquittal of the defendant of the charge upon which the information or indictment was founded.

CHAPTER 12.

JUDGMENT AND EXECUTION.

ARTICLE 1.—THE JUDGMENT.

§ 8278. **After conviction, judgment. Time.** After a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal or once in jeopardy, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment. § 428, C. Cr. C. am'd.

§ 8279. **Time specified.** The time appointed must be at least two days after the verdict, if the court intends to remain in session so long; or if not, at as remote a time as can reasonably be allowed. § 429, C. Cr. P.

§ 8280. **Defendant's presence. Felony. Misdemeanor.** For the purpose of judgment, if the conviction is for a felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence. § 430, C. Cr. P. am'd.

§ 8281. **Officer to produce defendant.** When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly. § 431, C. Cr. P.

§ 8282. **Bench warrant.** If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for his arrest. § 432, C. Cr. P.

§ 8283. **Same. Duty of clerk.** The clerk, on the application of the state's attorney, may, accordingly, at any time after the order, whether the court is sitting or not, issue a bench warrant into one or more counties. § 433, C. Cr. P.

§ 8284. **Form of bench warrant.** The bench warrant must be substantially in the following form: § 434, C. Cr. P.

State of North Dakota, }
County of } ss.

To any sheriff, constable, marshal or policeman in this state:

A. B., having been, on the day of
A. D. 18, duly convicted in the district court of the county of of the crime of (designating it generally), you are therefor commanded forthwith to arrest the above named A. B. and bring him before that court for judgment, or if the court has adjourned for the term, you are to deliver him into the custody of the sheriff of the county of (as the case may be).

(Given under my hand, with the seal of said court affixed, this
..... day of, A. D. 18

By order of the court.

[Seal.]

....., clerk.

§ 8285. **Where and how served.** The bench warrant may be served in any county of the state, and in the same manner as a warrant of arrest. § 435, C. Cr. P. am'd.

§ 8286. **Disposal of defendant on arrest.** Whether the bench warrant is served in the county in which it was issued or in

another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

§ 437, C. Cr. P. **§ 8287. Defendant informed of rights.** When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the charge against him, and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

§ 438, C. Cr. P. **§ 8288. Defendant may show cause against judgment.** He may show for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of his insanity must be tried as hereinafter in this code provided for. If, upon the trial of that question the jury find that he is sane, judgment must be pronounced, but if they find him insane he may be committed to the state hospital for the insane, until he becomes sane, or is otherwise committed according to law, and when notice is given of the fact, as hereinafter provided for, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment or for a new trial, in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

§ 439, C. Cr. P. **§ 8289. Judgment rendered.** If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered.

§ 8290. Court to hear evidence. Degree of crime. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, if said plea is accepted and the defendant does not designate in his plea the degree thereof, before passing sentence, determine the degree, and the provisions, so far as applicable, of section 8292 and of 8293 of this code shall govern in said determination.

§ 440, C. Cr. P. **§ 8291. Same. Aggravation. Mitigation.** After a plea or verdict of guilty, in a case when a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

§ 441, C. Cr. P. **§ 8292. How evidence presented.** The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

§ 442, C. Cr. P. **§ 8293. Other evidence prohibited.** No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court or member thereof in aggravation or mitigation of the punishment, except as provided in the last two sections.

§ 443, C. Cr. P. **§ 8294. Successive terms of imprisonment.** If the defendant has been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

§ 8295. **Judgment for fine and costs.** A judgment that the defendant pay a fine and costs, may also direct that he be imprisoned until both the fine and costs are satisfied, specifying the extent of the imprisonment, which must not exceed one day for every two dollars of the fine and costs, but such imprisonment does not discharge the judgment for fine and costs or either, and said judgment may at any time thereafter within the time limited by law, be collected upon execution issued thereon. § 444, C. Cr. P. am'd.

§ 8296. **Same. To be docketed.** A judgment that the defendant pay a fine and costs or either, must be docketed and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. § 445, C. Cr. P. am'd.

§ 8297. **Judgment. Entered in minutes. Record.** When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must, as soon as may be, annex together and file the following papers which constitute a record of the action: § 446, C. Cr. P. am'd.

1. The information or indictment and all the papers filed in the action together with a copy of the minutes of the plea or demurrer.

2. A copy of the minutes of the trial.

3. The written charges given or refused, with indorsements if any thereon; the written instructions given by the court and the copy of any oral instructions by the court and filed with the clerk.

4. A copy of the judgment.

ARTICLE 2.—THE EXECUTION.

§ 8298. **Execution to officer.** When a judgment other than of death has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution. § 447, C. Cr. P.

§ 8299. **For fine and costs.** If the judgment is for a fine and costs or either alone, execution may issue thereon as on a judgment in a civil action. § 448, C. Cr. P. am'd.

§ 8300. **For imprisonment or fine and imprisonment.** If the judgment is imprisonment, or a fine and imprisonment until such fine is paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with. § 449, C. Cr. P.

§ 8301. **Judgment. By what officer executed.** When the judgment is imprisonment in the county jail, or a fine and that the defendant be imprisoned until it is paid, the judgment must be executed by the sheriff of the county or subdivision. In all other cases when the sentence is imprisonment, the sheriff of the county must deliver the defendant to the proper officer, in execution of the judgment. § 450, C. Cr. P.

§ 8302. **Judgment of imprisonment in penitentiary.** If the judgment is for imprisonment in the penitentiary, the sheriff of the county or subdivision must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden, superintendent or keeper of the penitentiary. He must also deliver to the warden or other proper officer a certified copy of the judgment, and take from the warden or other proper officer a receipt for the defendant, and make return thereof to the court. § 451, C. Cr. P. am'd.

- § 452, C. Cr. P. **§ 8303. Authority while conveying defendant.** The sheriff or his deputy, while conveying the defendant to the proper prison, in execution of a judgment of imprisonment, has the same authority to require the assistance of any citizen of this state, in securing the defendant, and in retaking him if he escapes, as if the sheriff was in his own county; and every person who refuses or neglects to assist the sheriff, when so required, is punishable as if the sheriff was in his own county.
- § 8304. **Imprisonment in penitentiary is at hard labor.** In all cases when by law a person is sentenced to imprisonment in the penitentiary, it shall be at hard labor, whether so designated by the jury or court or not.
- § 453, C. Cr. P. **§ 8305. Judgment of death. Warrant to execute.** When am'd. judgment of death is rendered, the judge must sign and deliver to the sheriff of the county, a warrant duly attested by the clerk under the seal of the court, stating the conviction and judgment, and appointing a day on which the judgment is to be executed, which must not be less than three months after the day in which the judgment is entered, and not longer than six months thereafter.
- § 454, C. Cr. P. **§ 8306. Statement and evidence sent governor.** The judge of a court at which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.
- § 455, C. Cr. P. **§ 8307. Governor. Judges of supreme court.** The governor may thereupon require the opinion of the judges of the supreme court or any of them, upon the statement so furnished.
- § 456, C. Cr. P. **§ 8308. Governor only can reprieve.** No judge, court or officer other than the governor can reprieve or suspend the execution of a judgment of death, except the sheriff, in the cases provided in the next seven sections, unless an appeal is taken.
- § 457, C. Cr. P. **§ 8309. If defendant becomes insane.** If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon from the list of jurors selected, or to be selected forthwith by the county commissioners, a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the state's attorney.
- § 458, C. Cr. P. **§ 8310. Inquisition to try insanity.** The state's attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.
- § 459, C. Cr. P. **§ 8311. Return of inquisition.** A certificate of the inquisition must be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.
- § 460, C. Cr. P. **§ 8312. Duty of sheriff on such return.** If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the governor or from the judge of the court by which the judgment was rendered, directing the execution of the judgment.

§ 8313. **Same. Defendant found insane.** If the inquisition finds that the defendant is insane, the sheriff must immediately transmit to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment. § 461, C. Cr. P.

§ 8314. **Female defendant pregnant. Inquisition.** When there is good reason to suppose that a female against whom judgment of death is rendered, is pregnant, the sheriff of the county or subdivision, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians of the state to inquire into the supposed pregnancy. Immediate notice thereof must be given to the state's attorney. The provisions of sections 8312 and 8313 apply to the proceedings upon the inquisition. § 462, C. Cr. P.

§ 8315. **Duty of sheriff on the return.** If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment. If, however, it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor. § 463, C. Cr. P.

§ 8316. **Governor may issue warrant.** When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment. § 464, C. Cr. P.

§ 8317. **Duty of court when judgment not executed.** If, for any reason, a judgment of death has not been executed, and it remains in force, the court in which the conviction was had, on the application of the state's attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. § 465, C. Cr. P.

§ 8318. **Same. New time fixed.** Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the sheriff of the proper county execute the judgment at a specified time. The sheriff must execute the judgment accordingly. § 466, C. Cr. P.

§ 8319. **How punishment of death inflicted.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead. § 467, C. Cr. P.

§ 8320. **In what jail defendant kept.** When there is no jail within the county, or whenever the officer having in charge any person under judgment of death, deems the jail of the county where the conviction was had, insecure, unfit or unsafe for any cause, such officer may confine such person in the jail of any other convenient county of the state, and the jailer of any such convenient county shall receive and keep such person in the same manner as if he had been delivered to him by an officer of his own county; and the county in which said person was convicted shall pay all expenses of keeping and maintaining him in said jail. § 468, C. Cr. P. am'd.

§ 8321. **Where judgment of death executed.** A judgment of death must be executed within the walls or yard of the jail of the county in which the conviction was had, or within some convenient inclosure within said county. § 468, C. Cr. P. am'd.

§ 8322. **Execution. Who must or who may be present.** A judgment of death must be executed by the sheriff of the county where the conviction was had, or by his deputy, one of whom at least must be present at the execution. The said sheriff or deputy sheriff must invite the presence, by at least three days' notice, of the state's attorney of the county together with one physician and twelve repu- § 469, C. Cr. P. am'd.

table citizens to be selected by him. He must also at the request of the defendant permit any minister or ministers of the gospel whom the defendant may name, and any of his friends and relatives not exceeding five, to attend the execution, and also such peace officers as the sheriff or deputy sheriff may deem proper. But no person other than those mentioned in this section can be present at the execution, nor must any person under age be allowed to witness the same.

§ 470. C. Cr. P.
am'd.

§ 8323. Certificate of execution. Witnesses. The sheriff or deputy sheriff must prepare and sign with his name of office and attach to the warrant under which he acted, a certificate setting forth that the judgment was executed upon the defendant according to the provisions of the last three sections, and the time, manner and place of the execution, and also the names of the twelve persons, not relatives of the defendant, whom he invited to be present and the names of those invited and who attended such execution. The sheriff or deputy shall request and allow such number of said persons as may be willing so to do, to attest said certificate by their signatures.

§ 471. C. Cr. P.
am'd.

§ 8324. Return of warrant. The sheriff or deputy sheriff who executed the warrant must return the same together with the certificate provided for in the last section, to the clerk of the district court from which it was issued, and the clerk of said court must file and retain the same in his office with the other papers in the action.

CHAPTER 13.

APPEALS.

ARTICLE 1. — NOTICE OF APPEAL AND SERVICE.

§ 8325. Appeal, who may take. Either the defendant or the state may take an appeal as provided in this article.

§ 8326. Defendant's right to appeal. An appeal to the supreme court may be taken by the defendant as a matter of right from any judgment against him.

§ 474. C. Cr. P.
am'd.

§ 8327. Title of action on appeal. The party appealing is known as the appellant and the adverse party as the respondent; but the title of the action is not changed in consequence of the appeal.

§ 475. C. Cr. P.
am'd.

§ 8328. From what defendant may appeal. An appeal may be taken by the defendant:

1. From a final judgment of conviction.
2. From an order refusing a motion in arrest of judgment.
3. From an order denying a motion for a new trial.
4. From an order made after judgment affecting any substantial right of the party.

§ 476. C. Cr. P.
am'd.

§ 8329. From what the state may appeal. An appeal may be taken by the state:

1. From a judgment for the defendant on a demurrer to the information or indictment.
2. From an order granting a new trial.

3. From an order arresting judgment.
4. From an order made after judgment, affecting any substantial right of the state.
5. From an order of the court directing the jury to find for the defendant.

§ 8330. **Time for appeal limited.** An appeal from a judgment may be taken within one year after its rendition, and from an order within sixty days after it is made. § 477, C. Cr. P. am'd.

§ 8331. **Manner of taking appeal. Notice.** An appeal is taken by the party taking it or the attorney of such party, serving upon the adverse party, or the attorney of the adverse party who acted as an attorney of record in the district court at the trial, or at the time the order was made or judgment rendered, a copy of the notice of appeal, and by filing the original thereof, with the clerk of the district court of the county in which the order or judgment appealed from is made, entered or filed.

§ 8332. **Personal service not made. Publication.** If personal service cannot be made, the judge of the district court in which the action is pending or was tried, upon proof thereof, may make an order for publication of the notice in some newspaper, for a period not exceeding thirty days. Such publication is equivalent to personal service.

§ 8333. **When appeal deemed taken.** The appeal is deemed to be taken when notice thereof as required by sections 8331 or 8332 is filed in the office of the clerk of the district court of the county in which the order or judgment appealed from is made, entered or filed, with evidence of the service or publication thereof indorsed thereon or attached thereto.

§ 8334. **Appeal by state. Effect.** An appeal taken by the state in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed.

§ 8335. **What judgments superseded by appeal.** An appeal to the supreme court from a judgment of conviction, stays the execution of the judgment in all capital cases, and in all other cases upon filing with the clerk of the district court of the county in which the conviction was had, a certificate of the judge who presided at the trial, or of a judge of the supreme court, that in his opinion there is probable cause for the appeal, but not otherwise, except as hereinafter provided. § 479, C. Cr. P. am'd.

§ 8336. **Certificate. Duty of sheriff.** If the certificate provided for in the last section is filed, the sheriff must, if the defendant is in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on the appeal. § 480, C. Cr. P. am'd.

§ 8337. **Execution suspended.** If, before the granting of the certificate, the execution of the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate upon the sheriff of the county in which such judgment was entered, the defendant must be restored, by the officer in whose custody he is, to his original custody. § 481, C. Cr. P.

§ 8338. **Duty of clerk when appeal taken.** Upon the appeal being taken, it shall be the duty of the clerk of the district court with whom the notice of appeal is filed, without charge and without unnecessary delay, to make out a full and perfect transcript of all the papers in the case on file in his office, except the papers § 482, C. Cr. P. am'd.

returned by the committing magistrate on the preliminary examination when there has been one, and of all the entries made in his minutes, and certify the same under his hand and the seal of the court, and transmit the same to the clerk of the supreme court, and upon receipt thereof, the clerk of the supreme court must file the same and perform the same services as in civil cases without charge.

§ 8339. Appeal by less than all defendants. When several defendants are prosecuted and tried jointly, any one or more of them may join in taking an appeal, but those who do not join shall take no benefit therefrom, yet they may appeal afterwards.

§ 8340. Appeal. Stay. Custody of defendant. An appeal taken by the defendant does not stay the execution of the judgment in any case not capital, unless bail is put in, except when the judgment is imprisonment in the penitentiary, and an appeal is taken during the term at which the judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, it may, in its discretion, order the sheriff or other officer having the defendant in custody, to detain him in custody without taking him to the penitentiary, to abide the judgment on appeal, if the defendant desires it.

§ 8341. Appeal taken. Bail put in. Clerk. Sheriff. When an appeal is taken by the defendant, and bail is put in, it is the duty of the clerk to give forthwith to the defendant, his agent or attorney, a certificate under his hand and the seal of the court, stating that an appeal has been taken and bail put in, and the sheriff or other officer having the defendant in custody, must, upon the delivering of such certificate to him, discharge the defendant from custody when imprisonment forms a part of the judgment and cease all further proceedings in execution of the judgment, and return forthwith to the clerk of the court who issued it, the execution or certified copy of the entry of judgment under which he acted, with his return thereon, if such execution or certified copy has been issued; and if such execution or certified copy has not been issued, it shall not be issued, but shall abide the judgment on the appeal.

ARTICLE 2. — DISMISSING APPEAL FOR IRREGULARITY.

§ 487, C. Cr. P.
am'd.

§ 8342. In substantial particulars. Notice. If the appeal is irregular in any substantial particular, but not otherwise, the supreme court may on any day, on motion of the respondent, upon five days' notice accompanied with the copies of the papers upon which the motion is founded, order it to be dismissed. The dismissal of an appeal affirms the judgment. But if the irregularities complained of are corrected in a reasonable time, the appeal shall not be dismissed and the supreme court must fix the time and direct the manner of correcting the irregularity.

§ 8343. When appeal must not be dismissed. An appeal must not be dismissed for any informality or defect in the taking thereof. If the same is corrected within a reasonable time after an appeal has been dismissed, another appeal may be taken. If an undertaking has been given which is defective in any respect, a new one may be filed on appeal in the supreme court.

ARTICLE 3. — ARGUMENT OF THE APPEAL.

§ 8344. **Appeal stands for argument at first term.** An appeal in a criminal action shall stand for argument at the first term after the record is filed, unless for good cause shown the hearing is postponed to a subsequent term, but the parties or their attorneys may by stipulation fix an earlier day for the hearing with the approval of the supreme court. § 489, C. Cr. P. am'd.

§ 8345. **When judgment must be affirmed. Reversal.** The judgment may be affirmed if the appellant fails to appear, but may be reversed only after argument, though the respondent fails to appear. § 491, C. Cr. P. am'd.

§ 8346. **Number of counsel heard.** Upon the argument of the appeal if the offense is punishable with death, three counsel upon each side must be heard if they require it. In any other case, the court may, in its discretion, restrict the argument to one counsel on each side. § 492, C. Cr. P.

§ 8347. **Defendant need not appear in supreme court.** The personal appearance of the defendant in the supreme court on the hearing of an appeal, is in no case necessary.

ARTICLE 4. — JUDGMENT IN SUPREME COURT.

§ 8348. **Technical errors to be disregarded.** After hearing the appeal, the court must give judgment without regard to technical errors or defects or exceptions which do not affect the substantial rights of the parties. § 493, C. Cr. P. am'd.

§ 8349. **Court may review intermediate orders.** Upon an appeal taken by the defendant from a judgment, the court may review any intermediate order or ruling involving the merits, or which may have affected the judgment adversely to the defendant.

§ 8350. **Power of supreme court on appeal.** The supreme court may reverse, affirm or modify the judgment or order appealed from, and may set aside, affirm or modify any or all the proceedings subsequent to, or dependent upon such judgment or order, and may if proper, order a new trial. In either case the action must be remanded to the district court with proper instructions, together with the opinion of the court.

§ 8351. **New trial ordered, where had.** When a new trial is ordered it must be had in the district court of the county from which the appeal was taken, or in some other county, or as directed by the supreme court.

§ 8352. **Judgment reversed. When defendant discharged.** If a judgment against the defendant is reversed without ordering a new trial, the supreme court must direct, if he is in custody, that he be discharged therefrom, or if on bail, that his bail be exonerated, or if money was deposited instead of bail, that it be refunded to the defendant. § 495, C. Cr. P.

§ 8353. **Judgment affirmed, must be enforced.** If a judgment against the defendant is affirmed, the original judgment must be enforced. § 496, C. Cr. P. am'd.

§ 8354. **Judgment of court entered. Certificate.** When the judgment of the supreme court is given, it must be entered in § 497, C. Cr. P.

the minutes, and a certified copy of the entry forthwith remitted to the clerk of the district court from which the appeal was taken.

§ 498, C. Cr. P.
am'd.

§ 8355. Certificate remitted, district court only has jurisdiction. After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings therein, and all orders necessary to carry the judgment into effect must be made by the district court to which the certificate is remitted.

§ 8356. Appeal by state. Power of supreme court. If the appeal is taken by the state, the supreme court cannot reverse the judgment or modify it so as to increase the punishment, but may affirm it, and shall point out any errors in the proceedings or in the measure of punishment and its opinion shall be obligatory on the district court as the correct exposition of the law.

§ 8357. Imprisonment. Reversal. Reimprisoned. Deduction. If a defendant has during the pendency of an appeal, been imprisoned in the execution of the judgment appealed from, and upon a new trial ordered by the supreme court shall again be convicted, the period of his former imprisonment shall be deducted by the district court from the period of imprisonment to be fixed on the last verdict of conviction.

CHAPTER 14.

WITNESSES AND EVIDENCE.

ARTICLE 1.—COMPELLING THE ATTENDANCE OF WITNESSES.

§ 499, C. Cr. P.

§ 8358. Subpoena defined. The process by which the attendance of a witness before a court or magistrate is required, is a subpoena.

§ 500, C. Cr. P.

§ 8359. Magistrate may issue. A magistrate before whom a complaint is laid, or to whom a presentment of a grand jury is sent, may issue subpoenas, subscribed by him, for witnesses within the state, either on behalf of the state or the defendant.

§ 501, C. Cr. P.

§ 8360. State's attorney, for grand jury. The state's attorney may issue subpoenas, subscribed by him, for witnesses within the state, in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury upon an investigation before them.

§ 502, C. Cr. P.
am'd.

§ 8361. Same. Attendance upon trial. The state's attorney may in like manner issue subpoenas for witnesses within the state, in support of an information or an indictment, to appear before the court at which it is to be tried.

§ 503, C. Cr. P.

§ 8362. Clerk issue blanks for defendant. The clerk of the court at which a criminal action is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, under the seal of the court and subscribed by him as clerk, for witnesses within the state, as may be required by the defendant.

§ 8363. **Form of subpoena.** A subpoena, authorized by the § 504, C. Cr. P. last four sections, must be substantially in the following form:

In the name of the state of North Dakota,

To A. B:

You are commanded to appear before C. D., a justice of the peace at the town of (or "the grand jury of the county of, " or "the district court, " or as the case may be.) on (stating the day and hour), as a witness in a criminal action prosecuted by the state of North Dakota against E. F.

Dated at the town of (as the case may be), the..... day of..... 18.....

"G. H., justice of the peace," or "I. K., state's attorney," or "by order of the court, L. M., clerk," (as the case may be).

§ 8364. **Subpoena duces tecum.** If any books, papers or § 505, C. Cr. P. documents are required, a direction to the following effect must be contained in the subpoena:

And you are required also to bring with you the following: (describe intelligibly the books, papers or documents required.)

§ 8365. **Subpoena, by whom served. Peace officer.** A § 506, C. Cr. P. subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the state or of the defendant, and must without delay, make a written return of the service, subscribed by him, with the title of his office, stating the time, place and manner of service.

§ 8366. **How served.** A subpoena is served by showing the § 507, C. Cr. P. original to the witness personally and informing him of its contents.

§ 8367. **Indigent witness. Expenses.** When a person at- § 508, C. Cr. P. tends before a magistrate, grand jury or court, as a witness in a criminal action, upon a subpoena or in pursuance of an undertaking, and it appears that he has come from a place outside of the county, or that he is poor and unable to pay the expenses of such attendance, the court at its discretion, if the attendance of the witness is upon a trial, by order upon its minutes, or in any other case, the judge, at his discretion, by a written order, may direct the county treasurer to pay the witness a reasonable sum to be specified in the order for the necessary expenses of his attendance.

§ 8368. **Duty of county treasurer. Payment.** Upon the § 509, C. Cr. P. production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

§ 8369. **When witness must attend out of his county.** § 510, C. Cr. P. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides or is served with the subpoena, unless the judge of the court in which the offense is triable, or a judge of the district court or a judge of the supreme court upon an affidavit of the state's attorney, or prosecutor or of the defendant, or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse upon the subpoena an order for the attendance of the witness.

§ 8370. **Disobedience. Contempt. Punishment.** Dis- § 511, C. Cr. P. obedience to a subpoena, or a refusal to be sworn or to testify, may be punished by the court or magistrate as a contempt, in the manner provided in the code of civil procedure. am'd.

§ 512, C. Cr. P.
am'd.

§ 8371. Witness for defendant, disobeying subpoena. A witness disobeying a subpoena issued on the part of the defendant in a criminal action, unless he shows good cause for his nonattendance, is liable to the defendant in the sum of fifty dollars, which may be recovered in a civil action.

§ 8372. Witness. Forfeiture of undertaking. When a witness has entered into an undertaking to appear, upon his failure to do so, the undertaking is forfeited in the same manner as undertakings of bail.

§ 8373. Witness for state confined. How attendance effected. When the testimony of a witness for the state is required in a criminal action, before a court of record of this state, and such witness is confined in the penitentiary or in a county jail, an order for his temporary removal from the penitentiary or such jail and for his production before such court, may be made by the court in which the action is pending or by the judge authorized by law to preside at the trial of such action, but in case the penitentiary or such jail is not in the county in which the application is made, such order shall only be made upon the affidavit of the state's attorney or some other person on behalf of the state showing that the testimony is material and necessary, and even then the granting of the order shall be in the discretion of the court or such judge. The order must be executed by the sheriff of the county in which it is made in the following manner:

1. If the person required as a witness is confined in the penitentiary, by delivering to the warden thereof a copy of such order, and it shall be the duty of the warden to deliver the person so required to such officer and to take such officer's receipt for such person indorsed upon the copy of such order; or,

2. If the person required as a witness is confined in the county jail, by delivering to the jailer a copy of such order and it shall be the duty of the jailer to deliver the person so required to such officer, and take such officer's receipt for such person indorsed upon said copy of such order.

It shall be the duty of the officer receiving any such person to take him before the proper court, safely to keep him, and when he is no longer required as a witness, to return him to the custody from which he was received. Neither the warden nor the jailer shall be responsible for any such person until his return, and upon the return of any such person the warden or jailer, as the case may be, shall indorse his receipt upon the original order. The sheriff executing any such order shall return the same to the clerk of the district court of the county from which it was issued, and said clerk shall file and preserve the same among the papers in the action. The expense of executing such order shall be paid by the county in which the order shall be made.

ARTICLE 2.—DEPOSITIONS IN CRIMINAL ACTIONS.

§ 1, sub-c. 1, c.
44, 1885.

§ 8374. Right of defendant to take. When a defendant has been held to answer a charge for a public offense, he may either before or after an information has been filed or an indictment has been found, have witnesses examined conditionally, on his behalf as prescribed in this article and not otherwise.

§ 8375. **In case of sick witness.** When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally. § 2, sub-c. 1, c. 44, 1885.

§ 8376. **Application. Affidavit, what to contain.** The application must be made upon affidavit, stating: § 3, sub-c. 1, c. 44, 1885.

1. The nature of the offense charged.
2. The state of the proceedings in the action.
3. The name and residence of the witness, and that his testimony is material to the defense of the action.
4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

§ 8377. **Same. Notice of.** The application may be made to the court or to a judge thereof, and must be made upon three days' notice to the state's attorney. § 4, sub-c. 1, c. 44, 1885.

§ 8378. **Court to issue order for examination.** If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the state's attorney within a specified time before that fixed for the examination. § 5, sub-c. 1, c. 44, 1885.

§ 8379. **Contents of order. Service.** The order must direct that the examination be taken before a magistrate named therein; and on proof being furnished to such magistrate of service upon the state's attorney of a copy of the order, if no counsel appears on the part of the state, the examination must proceed. § 6, sub-c. 1, c. 44, 1885.

§ 8380. **When examination shall not proceed.** If the state's attorney or other counsel appears on behalf of the state, and it is shown to the satisfaction of the magistrate by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place, otherwise it must proceed. § 7, sub-c. 1, c. 44, 1885.

§ 8381. **How attendance of witness enforced.** The attendance of the witness may be enforced by subpoena issued by the magistrate before whom the examination is to be taken, or from the court where the trial is to be had. § 8, sub-c. 1, c. 44, 1885.

§ 8382. **Testimony must be written. Authentication.** The testimony of the witness must be taken down in writing by the magistrate or by some person under his direction; or the magistrate may, in his discretion, order the testimony and proceedings to be taken down in shorthand and for that purpose he may appoint a stenographer. The deposition or testimony of the witness must show and contain: § 9, sub-c. 1, c. 44, 1885.

1. The name of the witness, his age, his place of residence, and his business or profession.

2. The questions put to the witness and his answers thereto, consecutively as the questions are asked and answers given. Each answer must be distinctly read to the witness as it is taken down and corrected or added to until it conforms to what he declares to be the truth. But in cases when the testimony is taken down in shorthand the answer or answers need not be read to him.

3. A statement of the grounds on which an objection to a question on either side is sustained or on which the witness declines to answer it.

4. The signature of the witness to the deposition, or if he refuses to sign it, his reasons for refusing must be stated in writing as he gives them. In cases when the deposition is taken down in shorthand, it must not be signed by the witness.

5. It must be certified by the magistrate when reduced to writing by him or under his direction, and signed by him.

When taken down in shorthand a transcript of the stenographer's record, certified by him as being a correct statement of the testimony of the witness and proceedings in the case, shall be *prima facie* a correct statement of such testimony and proceedings. The stenographer shall within five days after the close of such examination make a full and complete written or typewritten transcript of his shorthand record and deliver the same to the magistrate before whom the same was taken, and thereupon said magistrate must add his certificate as if reduced to writing by him, and transmit the same carefully sealed up to the clerk of the court in which the action is pending, or may come for trial.

§ 9, sub-c. 1, c.
44, 1885.

§ 8383. Deposition may be read in evidence. The deposition or certified copy thereof may be read in evidence by either party on the trial upon its appearing that the witness is unable to attend by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state. Upon reading the depositions in evidence the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

§ 10, sub-c. 1, c.
44, 1885,
am'd.

§ 8384. Witness confined in penitentiary. Procedure. When a material witness for a defendant under a criminal charge is confined in the penitentiary, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of this code commencing with section 8374 and ending with section 8383, so far as applicable, govern in the application for and in the taking and use of such depositions. Such depositions may be taken before any magistrate or notary public of the county in which the penitentiary or jail is situated, or in case the witness is confined in the penitentiary and the defendant is unable to pay for taking the deposition, before the warden, whose duty it shall be to act without compensation. Every officer before whom testimony shall be taken by virtue hereof, shall have authority to administer and shall administer an oath to the witness, that his testimony shall be the truth, the whole truth and nothing but the truth.

ARTICLE 3.—TAKEN WITHOUT THE STATE.

§ 1, sub-c. 2, c.
44, 1885.

§ 8385. Deposition, when witness not in state. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness, residing out of the state, examined in his behalf as prescribed in this article, and not otherwise.

§ 2, sub-c. 2, c.
44, 1885,
am'd.

§ 8386. Commissioner. Interrogatories. Instruction. When a material witness for the defendant resides out of the state, the defendant may apply for an order that the witness be examined on a commission, to be issued under the seal of the court and the signa-

ture of the clerk, directed to some party designated as commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, and to take and certify the deposition of the witness and return it according to the instructions given with the commission.

§ 8387. Application. Affidavit. Contents. Application must be made upon affidavit stating:

1. The nature of the offense charged.
2. The state of the proceedings in the action, and that an issue of fact has been joined therein.
3. The name of the witness, and that his testimony is material to the defense of the action.
4. That the witness resides out of the state.

§ 8388. Same. Notice of. The application may be made to the court or a judge thereof, and must be upon three days' notice to the state's attorney. § 4, sub-c. 2, c. 44, 1885.

§ 8389. Order of court. Commission. If the court or judge to whom the application is made, is satisfied of the truth of the facts stated and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court or judge may insert in the order a direction that the trial be stayed for a specified time reasonably sufficient for the execution of the commission and return thereof, or the case may be continued. § 5, sub-c. 2, c. 44, 1885.

§ 8390. Interrogatories. Service of. When the commission is ordered the defendant must serve upon the state's attorney without delay, a copy of the interrogatories to be annexed thereto, with three days' notice of the time at which they will be presented to the court or judge. The state's attorney may in like manner serve upon the defendant or his counsel cross interrogatories, to be annexed to the commission, with like notice. In the interrogatories, either party may insert any question pertinent to the issue. When the interrogatories and cross interrogatories are presented to the court or judge, according to the notice, the court or judge must modify the questions, so as to conform them to the rules of evidence, and must indorse upon them his alterations, and annex them to the commission. § 6, sub-c. 2, c. 44, 1885.

§ 8391. Court must direct manner of return. Unless the parties otherwise consent by an indorsement upon the commission, the court or judge must indorse thereon the direction and manner in which it must be returned, and may in his discretion direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name, and the place where his office is kept. § 7, sub-c. 2, c. 44, 1885.

§ 8392. Manner of executing commission. The commissioner, unless otherwise specially directed, may execute the commission as follows: § 8, sub-c. 2, c. 44, 1885.

1. He must administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth and nothing but the truth.
2. He must cause the examination of the witness to be reduced to writing and subscribed by him.
3. He must write the answers of the witness as nearly as possible in the language in which he gives them, and read to him each answer so taken down, and correct or add to it until it conforms to what he declares is the truth.

4. If the witness declines to answer a question, that fact, with the reason assigned by him for declining, must be stated.

5. If any papers or documents are produced before him, and proved by the witness, they or copies of them, must be annexed to the deposition, subscribed by the witness, and certified by the commissioner.

6. The commissioner must subscribe his name to each sheet of the deposition, with the papers and documents proved by the witness, or copies thereof, to the commissioner, and must close it up under seal, and address it as directed by the indorsement thereon.

7. If there is direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post office. If any other direction is made by the written consent of the parties, or by the court or judge, to the commissioner as to its return, the commissioner must comply with the directions. A copy of this section must be annexed to the commission.

§ 9, sub-c. 2, c.
44, 1885.

§ 8393. Commission delivered to an agent. If the commission and return are delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

§ 10, sub-c. 2, c.
44, 1885.

§ 8394. Agent becoming incapacitated. Procedure. If the agent is dead, or from sickness or other cause is unable personally to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent, that the agent is dead, or, from sickness or other casualty, unable to deliver it, and it has not been opened or altered since the person making the affidavit received it, and that he believes it has not been opened or altered since it came from the hands of the commissioner.

§ 11, sub-c. 2, c.
44, 1885.

§ 8395. Commission and return must be filed. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment or information is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post office, and open and file it in his office, where it must remain unless otherwise directed by the court.

§ 12, sub-c. 2, c.
44, 1885.

§ 8396. Same. Constitute public record. The commission and return must at all times be open to the inspection of all persons, who must be furnished a copy of the same or any part thereof, by the clerk on payment of his fees.

§ 13, sub-c. 2, c.
44, 1885.

§ 8397. Depositions may be read on trial. Depositions taken under a commission, may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories, or to the answers in the deposition, as if the witness had been examined orally in court.

CHAPTER 15.

MISCELLANEOUS PROVISIONS.

ARTICLE 1.—INQUIRING INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

§ 8398. **Insane person cannot be tried or punished.** An act done by a person in a state of insanity cannot be punished as a public offense, nor can a person be tried, adjudged to punishment or punished for a public offense, while he is insane. § 514, C. Cr. P.

§ 8399. **Doubt arising, question to be tried.** When a criminal action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arises as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, at the discretion of the court, during the pendency of the issue of insanity. The jury may be impaneled from the jurors summoned and returned for the term, if not discharged, or others may be summoned by direction of the court as provided in sections 8135 to 8140, both inclusive. §§ 515, 516,
C. Cr. P.
am'd.

§ 8400. **Procedure and order of trial.** The trial of the question of insanity must proceed in the following order: § 517, C. Cr. P.

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity.

2. The counsel for the state may then open its case and offer evidence in support thereof.

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permits them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides, without argument, the counsel for the state must commence, and the defendant or his counsel may conclude the argument to the jury.

5. If the action is for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. If it is for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

6. The court must then charge the jury.

§ 8401. **Charge of court. Sections applicable.** The provisions of sections 8181 and 8183 in respect to the duty of the court upon questions of law, and of the jury upon questions of fact, and the provisions of section 8217 in respect to the charge of the court to the jury, upon the trial of an indictment or information, apply to the question of insanity. § 518, C. Cr. P.
am'd.

§ 8402. **If found sane, trial to proceed.** If the jury find the defendant sane, the trial of the action must proceed, or judgment may be pronounced, as the case may be. § 519, C. Cr. P.

§ 8403. **Defendant found insane.** If the jury finds that the defendant is insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be, in the mean- § 520, C. Cr. P.
am'd.

time, committed by the sheriff to the state hospital for the insane, and that upon his becoming sane, he be redelivered to the sheriff.

§ 521. C. Cr. P. § 8404. **Commitment exonerates bail.** The commitment of the defendant as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant to a return of money he may have deposited instead of bail.

§ 522. C. Cr. P. am'd. § 8405. **Defendant becoming sane. Procedure.** If the defendant is received into the state hospital for the insane, he must be detained there until he becomes sane. When he becomes sane the superintendent must give notice of that fact to the sheriff and state's attorney of the county. The sheriff must thereupon without delay, bring the defendant from the said hospital and place him in the proper custody, until he is brought to trial or to judgment, as the case may be, or is legally discharged. The sheriff must receive the actual expenses incurred and no more.

§ 523. C. Cr. P. am'd. § 8406. **Expenses, how paid.** The expense of taking the defendant to the state hospital for the insane and of bringing him back shall be met and paid in the manner and as provided by law for the payment of the delivery thereto of persons admitted to said hospital by the commissioners of insanity of the county.

ARTICLE 2. — COMPENSATION FOR ATTORNEYS AND WITNESSES.

§ 1, c. 7, 1879. am'd. § 8407. **Indigent defendant, attorney appointed.** In all criminal actions when it is satisfactorily shown to the court that the defendant has no means, and is unable to employ counsel, the court shall appoint and assign counsel for his defense and allow and direct to be paid by the county in which such trial is had, a reasonable and just compensation to the attorney so assigned for such services as he may render; provided, however, that such attorney shall not be paid a sum to exceed twenty-five dollars in any one case.

§ 8408. **Same. Witnesses subpoenaed for.** Whenever it appears to the court before which a criminal action is about to be tried that the defendant is unable to pay the witnesses in his behalf, such court must make an order, to be entered in the minutes, that such witnesses, naming them, as may be deemed reasonable be subpoenaed and attend at such trial at the expense of the county liable to pay the costs of the prosecution of such action and such witnesses shall be paid accordingly.

ARTICLE 3. — COMPROMISING MISDEMEANORS BY LEAVE OF THE COURT.

§ 524. C. Cr. P. § 8409. **When misdemeanor may be compromised.** When a defendant is held to answer on a charge of misdemeanor, for which the person by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed:

1. By or upon an officer of justice while in the execution of the duties of his office.
2. Riotously; or.
3. With an intent to commit a felony.

§ 525. C. Cr. P. § 8410. **Stay of proceedings upon compromise.** If the party injured appears before the court in which the trial is to be had, at any time before the trial, and acknowledges that he has received

satisfaction for the injury, the court may in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but in such cases the reasons for the order must be set forth therein and entered on the minutes.

§ 8411. **Order to stay is a bar.** The order authorized by the § 526, C. Cr. P.
last section is a bar to another prosecution for same offense.

§ 8412. **Compromise limited.** No public offense can be com- § 527, C. Cr. P.
promised, nor can any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in sections 8409 and 8410.

ARTICLE 4. — CORPORATIONS, CRIMINAL ACTIONS AGAINST.

§ 8413. **Magistrate. Summons, requirements of.** When- § 528, C. Cr. P.
ever a presentment by a grand jury or a complaint in writing is laid am'd.
before a magistrate charging a corporation within his jurisdiction, of a public offense within its ability to commit, the magistrate must file the same and thereupon issue a summons signed by him, with his name of office, requiring such corporation to appear before him to answer the charge at a specified place and time, not less than ten days after the issuance of the summons.

§ 8414. **Form of summons.** The summons must be in sub- § 529, C. Cr. P.
stantially the following form:

State of North Dakota, {
County of..... } ss.

In the name of the state of North Dakota.

To the (naming the corporation):

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer to the charge made against you, upon the complaint of A. B., or the presentment of the grand jury of the county of for (designating the offense generally).

Dated at the city, (or town) of, the
day of, 18

.....
Justice of the Peace,
(or as the case may be.)

§ 8415. **Summons, manner of service.** The summons must § 530, C. Cr. P.
be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof.

§ 8416. **Charge investigated. Manner of.** At the time § 531, C. Cr. P.
appointed in the summons, the magistrate must investigate the charge in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

§ 8417. **Certificate of magistrate. Procedure.** After hear- § 532, C. Cr. P.
ing the proofs, the magistrate must certify upon the presentment or am'd.
the complaint either that there is, or is not, sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint and certificate and the depositions of witnesses, if any have been taken, and exhibits together with a certified copy of the pro-

ceedings as they appear on his docket, and in the same manner as prescribed in section 7978.

§ 533, C. Cr. P.
am'd.

§ 8418. Certificate of probable cause. Procedure. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the state's attorney may, at the next term of the district court, file an information therefor, as in the case of a natural person held to answer. The state's attorney of the county may, by leave of the court, file an information against a corporation in like manner charging it with the commission of a public offense, or the grand jury may return an indictment therefor, without any previous action on the part of a magistrate.

§ 534, C. Cr. P.
am'd.

§ 8419. Appearance of corporation. Pleas. If an information is filed or an indictment returned, the corporation may appear by counsel to answer the same. If it does not thus appear a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 8420. Information filed or indictment returned. Summons. When an information is filed, without a preliminary examination, or an indictment returned against a corporation, the clerk of the district court must issue a summons in its corporate name, commanding it to appear and answer the information or indictment, and such summons must be served in the manner provided for the service of a summons in the code of civil procedure.

§ 535, C. Cr. P.
am'd.

§ 8421. Defendant's default. Plea. Fine collected. When the sheriff or other officer returns the summons with his certificate showing due service thereof, the corporation, on and after the day appointed in such summons for its appearance, must be considered in default, and the court must order the clerk to enter the plea of not guilty for said corporation in the minutes of the court, and all further proceedings shall be had in said action as if the corporation had appeared and pleaded not guilty to the information or indictment; and if upon the trial the corporation is found guilty, the court must impose a fine upon it as prescribed by law and enter judgment for the amount of such fine and the costs of said action in the same manner as on a judgment in a civil action.

ARTICLE 5. — ENTITLING AFFIDAVITS.

§ 536, C. Cr. P.

§ 8422. Affidavits need not be entitled. It is not necessary to entitle an affidavit or deposition in an action, whether taken before or after information or indictment or upon an appeal; but if made without a title or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refers to the proceedings, information, indictment or appeal in which it is made.

ARTICLE 6. — ERRORS AND MISTAKES IN PLEADINGS OR OTHER PROCEEDINGS.

§ 537, C. Cr. P.

§ 8423. Informalities in pleadings not fatal. Neither a departure from the form or mode prescribed in this code in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

ARTICLE 7. — DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

§ 8424. **Stolen property to be held by officer.** When § 538, C. Cr. P.
property alleged to have been stolen or embezzled, comes into the
custody of a peace officer, he must hold it subject to the order of the
magistrate authorized by the next section to direct the disposal
thereof.

§ 8425. **Magistrate to give order for delivery.** On satis- § 539, C. Cr. P.
factory proof of the title of the owner of the property, the magis-
trate before whom the complaint is laid, or who examines the charge
against the person accused of stealing or embezzling the property,
may order it to be delivered to the owner on his paying the reason-
able and necessary expenses incurred in its preservation, to be certi-
fied by the magistrate. The order entitles the owner to demand and
receive the property. am'd.

§ 8426. **Magistrate. Property stolen. Delivery.** If prop- § 540, C. Cr. P.
erty stolen or embezzled comes into the custody of a magistrate, it
must be delivered to the owner on satisfactory proof of his title, and
on his paying the necessary expenses incurred in its preservation, to
be certified by the magistrate.

§ 8427. **Court may order delivery.** If property stolen or § 541, C. Cr. P.
embezzled has not been delivered to the owner, the court before which
a trial is had for stealing or embezzling it, may, on proof of his title,
order it to be restored to the owner.

§ 8428. **Not claimed in six months. County treasurer.** § 542, C. Cr. P.
If the property stolen or embezzled is not claimed by the owner
before the expiration of six months from the conviction of a person
for stealing or embezzling it, the magistrate or officer having it in
custody must on the payment of the necessary expenses incurred in
its preservation, deliver it to the county treasurer, by whom, if it is
money, it must be paid into the county treasury, or if it is not money,
it must be sold and the proceeds paid into such treasury. am'd.

§ 8429. **Receipt to accused. Clerk. Magistrate.** When § 543, C. Cr. P.
money or other property is taken from a defendant arrested upon a
charge of a public offense, the officer taking it must at the time give
duplicate receipts therefor, specifying particularly the amount of the
money, or the kind of property taken, one of which receipts he must
deliver to the defendant, and the other of which he must forthwith
file with the clerk of the court to which the complaint and other
papers in the case are, by law, required to be sent. When such
property is taken by a police officer of any incorporated city or town,
he must deliver one of the receipts to the defendant, and one, with
the property, at once to the clerk or other person in charge of
the police office in such city or town, or, if there is no such clerk or
other person, then to the magistrate before whom such defendant may
be taken for examination or trial. am'd.

§ 8430. **Duty of clerk or magistrate.** The said clerk or
other person or magistrate must enter in a suitable book every amount
of money and a description of every article of property taken from
each person so arrested, and must attach a number to every amount
of money and every article of property and make a corresponding
entry thereof, but when the receipt and property, as provided in the
last section, are delivered to a magistrate it shall be sufficient com-

pliance with the provisions hereof if the entries are made in his docket.

ARTICLE 8.—REPRIEVES, COMMUTATIONS AND PARDONS.

- § 545, C. Cr. P.
am'd. **§ 8431. Governor may grant.** The governor of this state has the power to remit fines and forfeitures; to grant reprieves, commutations and pardons, after conviction for all offenses, except treason and in cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper; provided, application therefor is made in the manner prescribed in this article, and not otherwise.
- § 546, C. Cr. P. **§ 8432. Same. Treason. Legislative assembly.** The governor also has the power to, and may, suspend the execution of a sentence upon a conviction for treason, until the case can be reported to the legislative assembly at its next regular session, when the legislative assembly may either pardon or commute the sentence, direct the execution thereof or grant a further reprieve.
- § 547, C. Cr. P.
am'd. **§ 8433. Governor must report. Contents.** The governor must communicate to the legislative assembly at the beginning of each regular session thereof, each case of remission of fine or forfeiture and commutation or pardon granted since the last report, stating the name of the person relieved, the crime for which he was convicted, the sentence and its date and his action thereon with his reasons for granting the relief.
- § 548, C. Cr. P. **§ 8434. Application for pardon. Report required.** When an application is made to the governor for a pardon, he may require the presiding judge of the court before which the conviction was had, or the state's attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting the pardon.
- § 1, c. 88, 1883.
am'd. **§ 8435. Application for pardon restricted.** All applications for pardons on behalf of any person or persons convicted in any court in this state, of any crime, punishable under the laws thereof by imprisonment in the penitentiary, and sentenced to such imprisonment, shall be made and conducted in the manner hereinafter prescribed.
- § 2, c. 88, 1883.
am'd. **§ 8436. Notices. Service. Publication. Contents.** Notice of the application for such pardon shall be given to the judge who presided at the trial, or his successor in office and the state's attorney, or his successor in office, of the county, who prosecuted the action against such person or persons so convicted and sentenced, at least thirty days before such application is filed with the governor; the service of such notice upon the judge and state's attorney shall be made, and the return thereof certified in the same manner as now prescribed for the service of summons in the district court, and such certificate of service shall accompany every application to the governor. A notice of such application, setting forth the name, age and sex of the person or persons on whose behalf it is made, the crime of which he was convicted, and the time and place of such conviction and the term of imprisonment, shall also be published at least once a week for four consecutive weeks, in some newspaper of general circulation in the county where the offense for which a pardon is sought was committed; or if there is no newspaper published therein, then such notice shall

be posted in a conspicuous place on the door of the courthouse of such county for four consecutive weeks prior to the application. The affidavit of the publisher of such newspaper, or the person posting such notice showing that said notice has been published or posted as herein provided, shall also accompany such application.

§ 8437. **Who may contest pardon. Notice of.** Any person or persons feeling aggrieved by the application for a pardon may contest the same, and for that purpose may appear in person before the governor during the consideration of said application and show cause, by written or oral testimony, why such pardon should not be granted. In case any person objects and desires to contest such application, he may at any time before the same is considered by the governor notify him, in writing, of such desire, and, upon receipt by the governor of any such notice, it shall be his duty to fix a time and place for the hearing of such application and objections, and give reasonable notice thereof to all persons interested and applying or objecting, and such notice may be by mail or publication in the discretion of the governor. § 3, c. 88, 1883.
am'd.

§ 8438. **Governor may make additional rules.** The governor may in his discretion make such additional rules and regulations governing applications for pardons as may from time to time seem to him best, not in conflict with the provisions of this article; but the provisions of this article shall not apply to the applications for pardon to be granted within thirty days before the time when the convict would otherwise be legally entitled to discharge. § 4, c. 88, 1883.

§ 8439. **Papers filed with the secretary of state.** 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. § 551, C. Cr. P.
am'd.

§ 8440. **Governor may restore to citizenship.** The governor is hereby empowered to restore to citizenship any person convicted of any offense committed against the state, upon cause being shown, either after the execution or expiration of sentence or at any other time.

§ 8441. **Form of reprieve and pardon.** Each and every remission of a fine or forfeiture and each and every reprieve, commutation, pardon or restoration to citizenship shall be issued by the governor under his official signature and attested by the secretary of state under the great seal of the state.

§ 8442. **Governor may issue warrant.** The governor is hereby empowered to issue his warrant to all proper officers to carry into effect any act which he has power to do and which is regulated in this article and all such officers are hereby required to obey such warrant.

ARTICLE 9. — BAIL.

§ 8443. **Admission to bail defined.** Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon an undertaking with sufficient sureties for his appearance.

§ 8444. **Taking of bail defined.** The taking of bail consists of the acceptance, by a competent court or magistrate, or legally authorized officer, of the undertaking with sufficient sureties for the appear-

§ 552, C. Cr. P.
• am'd.

§ 1, c. 19, 1883.
am'd.

§ 554, C. Cr. P.
am'd.

§ 555, C. Cr. P.

ance of the defendant in person, according to the terms of the undertaking or that the sureties will pay to the state a specified sum.

§ 8445. When bail must be taken. Bail by sufficient sureties, shall be admitted upon all arrests in criminal actions when the offense is not punishable by death, and in such actions it may be taken by any competent court, magistrate or legally authorized officer.

§ 8446. Bail upon capital charge. Bail by sufficient sureties may be admitted upon arrests in criminal actions when the offense is punishable by death unless the proof of guilt is evident or the presumption thereof great. In such actions it shall be taken only by the supreme court or a judge thereof, or by a district court or a judge thereof, and the taking thereof shall be discretionary, regard being had to the nature and circumstances of the offense and to the evidence and to the usages of law. The finding of an indictment or the filing of an information does not add to the strength of the proof or the presumption to be drawn therefrom. In case the action has been tried by jury, and the jury have not agreed on a verdict and have been discharged by reason of inability to agree, then the defendant shall be entitled to bail, unless it shall appear to the court or judge, by proof, that such disagreement was occasioned by the misconduct of the jury or the defendant or his counsel.

§ 8447. Bail on appeal after conviction. After a conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases.

§ 8448. Before conviction. After conviction. If the offense is bailable the defendant may be admitted to bail before conviction:

1. For his appearance before the magistrate during the pendency of a trial or on the examination of the charge before being held to answer.

2. To appear before the court to which the magistrate holds him to appear upon the defendant being held to answer after examination.

3. After information filed or indictment found, either before the warrant is issued for his arrest, or upon any order of the court committing him or increasing the amount of bail, or upon his being surrendered by his bail to answer the information or indictment in the court in which it is filed or found, or to which it may be transferred for trial.

And after conviction:

1. If the appeal is from a judgment imposing a fine only, on an undertaking of bail that he will pay the same or such part thereof as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

2. If a judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment is reversed and the cause remanded for a new trial, he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof.

§ 8449. Qualifications of bail. Justification. The qualifications of bail are the same as those in civil cases, and the sureties must in all cases justify by affidavits taken before the magistrate, court or judge, that they each possess those qualifications.

§ 8450. **Bail taken. Order of discharge.** Upon the allowance of bail and the execution of the requisite undertaking to the state, the court under whose process he is held, or the magistrate or other officer must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the officer having him in custody, the defendant must be discharged.

§ 556, C. Cr. P.
am'd.

§ 8451. **Deposit for bail.** A deposit of the sum of money mentioned in the order admitting to bail, is equivalent to bail, and upon such deposit the defendant must be discharged from custody. If the defendant has given bail, he may at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned therein, and upon the deposit being made the bail is exonerated. Every deposit of money under the provisions of this section shall be with the clerk of the court in which the defendant is held to answer.

§ 557, C. Cr. P.
am'd.

§ 8452. **Notice to state's attorney.** When the admission to bail is a matter of discretion, the court, magistrate or officer to whom the application is made, must require reasonable notice thereof to be given to the state's attorney of the county.

§ 8453. **Who may take bail.** In every case when there is no provision of law authorizing a court, magistrate or other officer to take bail, the same may be taken by the supreme court or a judge thereof, or by the district court of the county in which the offense for which the defendant is arrested is triable, or by the judge thereof.

§ 8454. **Form of undertaking of bail.** Bail is put in by a written undertaking, executed by at least two sufficient sureties (with or without the defendant in the discretion of the court, or judge or magistrate), and acknowledged in substantially the following form:

"An order having been made (or an information having been filed, or an indictment having been found), on the day of 18.... by justice of the peace of county (or an information filed or an indictment found in the district court of the district in and for the county of), that be held to answer upon a charge of (stating briefly the nature of the offense) or, (as the case may be), charging (name of defendant) with the crime of (designating it generally) and he having been admitted to bail in the sum of dollars;

Now, therefore, we, and (as the fact may be,) of (stating their place of residence and occupation), jointly and severally, hereby undertake that the above named (naming the defendant) will appear and answer the charge above mentioned (or the information or indictment above mentioned, as the case may be) in whatever court it may be presented, and will at all times hold (or surrender) himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof, or, if he fails to perform either of these conditions, that he will pay to the state of North Dakota the sum of dollars, (inserting the sum in which the defendant is admitted to bail.)

§ 8455. **Who may make order admitting to bail on appeal.** In cases in which the defendant may be admitted to bail upon an appeal, the order admitting him to bail may only be made by the supreme court or a judge thereof or the district court before which the trial was had or the judge presiding at such trial. The bail must possess the qualification, and must be put in, in all respects as pro-

vided in other cases of bail, except that the undertaking must be conditioned as prescribed in section 8447 for undertakings of bail on appeal.

§ 558. C. Cr. P.
am'd.

§ 8456. Defendant may be arrested by his bail. Any person charged with a public offense and admitted to bail may be arrested by his bail at any time before they are finally discharged, and at any place within the state; or by a written authority indorsed on a certified copy of the undertaking of bail, they may empower any officer or person of suitable age and discretion to do so, and he may be surrendered and delivered to the proper sheriff or other officer, before any court, judge or magistrate having the requisite jurisdiction in the case; and at the request of such bail, the court, judge or magistrate shall recommit the party so arrested to the custody of the sheriff or other officer, and indorse on the undertaking of bail or certified copy thereof, after notice to the state's attorney, and if no cause to the contrary appears, the discharge and exoneration of such bail; and the party so committed shall be held in custody until discharged by due course of law.

§ 559. C. Cr. P.
am'd.

§ 8457. Forfeiture of bail. Excuse. If, without sufficient excuse, any person who has given an undertaking in a criminal action or proceeding neglects to appear according to the terms or conditions of the same, either as a witness or for hearing, arraignment, trial or judgment, or upon any other occasion when his presence in court, or before the magistrate may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the matters to be entered upon its minutes and the undertaking of bail, or the money deposited instead of bail, as the case may be, is and shall be thereupon declared forfeited, but, if at any time before the final adjournment of the court, such person or his bail appears and satisfactorily excuses his neglect the court may direct the forfeiture to be discharged upon such terms as may be just. After the forfeiture, the state's attorney must proceed with all due diligence by action against the bail jointly or severally in his discretion upon the undertaking so forfeited. If money instead of bail is so forfeited, the clerk of the court or other officer with whom it is deposited, must immediately after the final adjournment, or at such time as the court may direct, pay over the money deposited to the county treasurer.

§ 560. C. Cr. P.

§ 8458. Additional security may be required. When proof is made to any court, judge or other magistrate having authority to commit on criminal charges, that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, or has removed from the state, the judge or magistrate shall require such person to give better security, or for default thereof cause him to be committed to prison; and an order for his arrest may be indorsed on the former commitment, or a new warrant therefor may be issued by such judge or magistrate, setting forth the cause thereof.

§ 8459. Action on undertaking. Defects not fatal. No action brought on an undertaking of bail is barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety at the term or session when such default happened, nor by reason of any defect in the form of the undertaking, if it sufficiently appears, from the tenor thereof, at what court the party or witness was bound to

appear, and that the court or magistrate before whom it was taken, was authorized and required to take the same.

§ 8460. When surety may be discharged. Any surety on such undertaking may be discharged from further liability thereon, at any time before final judgment against him, by surrendering to the court or proper officer the principal in such undertaking, if such principal is a defendant in a criminal action, or if such principal is held as a witness in such action and it has not been tried; or by paying to the clerk of the court the amount specified in such undertaking, with such costs as the court may direct.

ARTICLE 10.—SEARCH WARRANTS.

§ 8461. Search warrant defined. A search warrant is an order in writing, in the name of the state, signed by a magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the magistrate. § 561, C. Cr. P.

§ 8462. Grounds for its issue. It may be issued upon either of the following grounds: § 562, C. Cr. P.

1. When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

2. When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

3. When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from such person, or from a house or other place occupied by him, or under his control, or from the possession of the person to whom he may have so delivered it.

§ 8463. Only upon probable cause. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched. § 563, C. Cr. P.

§ 8464. Sworn complaint must be made. The magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them. The depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist. § 564, C. Cr. P. am'd.

§ 8465. Requisites of warrant. If the magistrate is thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law. § 565, C. Cr. P.

§ 566. C. Cr. P. **§ 8466. Form of search warrant.** The warrant must be in substantially the following form:

State of North Dakota, }
County of..... } ss.

In the name of the state of North Dakota:

To any sheriff, constable, marshal or policeman in the county of

Proof by affidavit having been this day made before me by (naming every person whose affidavit has been taken), the (stating the particular grounds of the application according to section 8462, or if the affidavit is not positive), that there is probable cause for believing that (stating the grounds of the application in the same manner).

You are therefore commanded, in the day time (or "at any time of the day or night," as the case may be, according to section 8470 to make immediate search on the person of C. D.), (or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith before me, at (stating the place).

Dated at.....the.....day of.....18....

Justice of the peace of the city (or town) of.....

(or as the case may be).

§ 567. C. Cr. P. **§ 8467. By whom served.** A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, on his requiring it, he being present, and acting in its execution.

§ 568. C. Cr. P. **§ 8468. Officer may break open door.** The officer may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

§ 569. C. Cr. P. **§ 8469. Same for liberating assistant.** He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

§ 570. C. Cr. P. **§ 8470. When warrant may be served at night.** The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits be positive that the property is on the person or in the place to be searched. In which case he may insert a direction that it be served at any time of the day or night.

§ 571. C. Cr. P. **§ 8471. Warrant void after ten days.** A search warrant must be executed and returned to the magistrate by whom it was issued within ten days. After the expiration of that time the warrant, unless executed, is void.

§ 572. C. Cr. P. **§ 8472. How property disposed of.** When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections 8426 to 8429, both inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section 8462, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense, in respect to which the property was taken, is triable.

§ 8473. **Return of warrant.** The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect: § 573, C. Cr. P.

I, A. B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

§ 8474. **Copy of inventory.** The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant. § 574, C. Cr. P.

§ 8475. **Complaint controverted.** If the grounds on which the warrant was issued are controverted, the magistrate must proceed to take testimony in relation thereto. § 575, C. Cr. P.

§ 8476. **How testimony taken.** The testimony given by each witness must be reduced to writing and authenticated in the manner prescribed in sections 7960 and 7962. § 576, C. Cr. P.

§ 8477. **When property to be restored.** If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken. § 577, C. Cr. P.

§ 8478. **Papers to be returned to district court.** The magistrate must annex together the depositions, the search warrant and return and the inventory, and return them to the next term of the district court having authority and jurisdiction to inquire into the offense in respect to which the search warrant was issued, at or before its opening on the first day. § 578, C. Cr. P.

§ 8479. **Procuring search warrant without cause.** A person who maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor. § 579, C. Cr. P.

§ 8480. **Officer exceeding his authority.** A peace officer in executing a search warrant, who willfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor. § 580, C. Cr. P.

§ 8481. **Search of accused for dangerous weapons.** When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried. § 581, C. Cr. P.

ARTICLE 11.—PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

§ 8482. **Governor may offer reward for criminal.** The governor may offer a reward not exceeding one thousand dollars, payable out of the state treasury, for the apprehension: § 582, C. Cr. P.

1. Of any convict who has escaped from the penitentiary; or,
2. Of any person who has committed, or is charged with the commission of an offense punishable with death.

§ 8483. **Delivery of fugitives upon requisition.** A person charged in any state or territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in § 583, C. Cr. P.

this state, must, on demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this state, to be removed to the state or territory having jurisdiction of the crime.

§ 584, C. Cr. P. **§ 8484. Magistrate to issue warrant.** A magistrate may issue a warrant for the apprehension of a person so charged, who shall flee from justice and be found within this state.

§ 585, C. Cr. P. **§ 8485. Proceedings for arrest and commitment.** The proceedings for the arrest and commitment of a person charged, are in all respects similar to those provided in this code for the arrest and commitment of a person charged with a public offense committed in this state. Except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

§ 586, C. Cr. P. **§ 8486. Accused may be committed. Time.** If from the examination it appears that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation must commit him to the proper custody of his county, for such time to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this state, on the requisition of the executive authority of the state or territory in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

§ 587, C. Cr. P. **§ 8487. Accused may be admitted to bail.** The magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

§ 588, C. Cr. P. **§ 8488. Notice to state's attorney.** Immediately upon the arrest of the person charged, the magistrate must give notice to the state's attorney.

§ 589, C. Cr. P. **§ 8489. Duty of state's attorney.** The state's attorney must, immediately thereafter, give notice to the executive authority of the state or territory, or to the prosecuting attorney or presiding judge of the criminal court of the city or county therein, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

§ 590, C. Cr. P. **§ 8490. When accused must be discharged.** The person arrested must be discharged from custody or bail, unless before the expiration of the time designated in the warrant or undertaking he is arrested under the warrant of the governor of this state.

§ 591, C. Cr. P. **§ 8491. Magistrate to make return. Duty of district court.** The magistrate must return his proceedings to the next district court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time for his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking.

§ 1, c. 57, 1887. **§ 8492. Fugitive granted twenty-four hours. Counsel. Habeas corpus.** Any person who is arrested within this state, by virtue of a warrant issued by the governor of this state upon a requi-

sition of the governor of any other state or territory, as a fugitive from justice, under the laws of the United States, shall not be delivered to the agent of such state or territory until notified of the demand made for his surrender, and given twenty-four hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of habeas corpus, the prisoner shall be forthwith taken to the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the said judge of the district court.

§ 8493. Penalty for disobedience to last section. Any officer who shall deliver such person to such agent for extradition without first having complied with the provisions of the preceding section, shall be deemed guilty of a misdemeanor. § 2, c. 57, 1887.

§ 8494. Governor may demand fugitives from this state. The governor of this state may in any case authorized by the constitution and laws of the United States, demand of the executive authority of any other state or territory within the United States, any fugitive from justice or any person charged with the commission of treason, felony or other crime in this state, and appoint agents to receive such person for and on behalf of this state. The account of any such agent or agents employed for such purposes must be paid out of the state treasury. § 592, C. Cr. P. am'd.

§ 8495. No compensation allowed. Exceptions. No compensation, fee or reward of any kind, can be paid to, or received by a public officer of this state, for a service rendered or expense incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this state, or detaining him herein, except as provided in section 8494. § 593, C. Cr. P.

§ 8496. Violation a misdemeanor. A violation of the last section is a misdemeanor. § 594, C. Cr. P.

ARTICLE 12. — DISMISSAL OF THE ACTION BEFORE OR AFTER INFORMATION OR INDICTMENT FOUND FOR WANT OF PROSECUTION.

§ 8497. Prosecution to be dismissed. Information. Indictment. The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases: §§ 595, 596, C. Cr. P. am'd.

1. When a person has been held to answer for a public offense, if an information is not filed or an indictment found against him at the next regular term of the district court.

2. If a defendant whose trial has not been postponed upon his application is not brought to trial at the next term of the district court in which the information or indictment is triable after it is filed if an information, or if an indictment after it is found.

§ 8498. Court may order a continuance. If the defendant is not prosecuted or tried, as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking or on an undertaking of bail for his appearance to answer the charge at the time to which the action is continued. § 597, C. Cr. P.

§ 8499. Action dismissed. Effect of. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him. § 598, C. Cr. P.

- § 599, C. Cr. P. **§ 8500. Reasons for dismissal set forth in order.** The court may, either of its own motion or upon the application of the state's attorney, and in furtherance of justice, order an action, information or indictment to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered on the minutes.
- § 600, C. Cr. P. **§ 8501. Nolle prosequi abolished.** The entry of a nolle prosequi is abolished, and the state's attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.
- § 601, C. Cr. P. **§ 8502. Dismissal not a bar.** An order for the dismissal of the action, as provided in this article, is not a bar to any other prosecution for the same offense.

CHAPTER 16.

GENERAL PROVISIONS AND DEFINITIONS APPLICABLE TO THIS CODE.

- § 602, C. Cr. P. **§ 8503. Rule of construction of code.** The rule of common law that penal statutes are to be strictly construed, has no application to this code. This code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to promote its objects, and in furtherance of justice.
- § 603, C. Cr. P. **§ 8504. Code not retroactive.** No part of this code is retroactive unless expressly so declared.
- § 604, C. Cr. P. **§ 8505. Construction of certain words.** Unless when otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word "person" includes a corporation as well as a natural person.
- § 605, C. Cr. P.
am'd. **§ 8506. What writing includes.** The term "writing," includes printing and typewriting.
- § 606, C. Cr. P. **§ 8507. What oath includes.** The term "oath," includes an affirmation.
- § 607, C. Cr. P. **§ 8508. What signature includes.** The term "signature," includes a mark when the person cannot write, his name being written near it, and the mark being witnessed by a person who writes his own name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient.
- § 608, C. Cr. P. **§ 8509. To what this code applies.** This code applies to criminal actions and to all other proceedings in criminal cases which are herein provided for.
- § 609, C. Cr. P.
am'd. **§ 8510. Common law prevails when code silent.** The procedure, practice and pleadings in the district courts of this state, in criminal actions or in matters of a criminal nature, not specially provided for in this code, shall be in accordance with the procedure, practice and pleadings under the common law.

§ 8511. County, subdivision and judicial subdivision defined. Whenever the terms, "county," "subdivision" or "judicial subdivision" are employed in this code, in defining or describing the territorial or local jurisdiction of any magistrate or court, or in restraining, enlarging or otherwise conferring authority upon any court, officer or person of this state, they are deemed to be employed in the same sense and interchangeably, except when a different sense plainly appears: as for example:

1. The term "county" when so employed includes an organized county, or an organized county and such unorganized counties or other territory or parts of this state as now are or as may be hereafter, by law, attached to such organized county for judicial purposes.

2. The term "subdivision" when so employed includes an organized county, or an organized county and such unorganized county or counties, or other territory or parts of this state, as now are or as may be hereafter, by law, attached to such organized county for judicial purposes.

3. The term "judicial subdivision" when so employed, includes an organized county or an organized county and such unorganized county or counties, or other territory or parts of this state, as now are or as may be hereafter, by law, attached to such organized county for judicial purposes.

CHAPTER 17.

THE PENITENTIARY AND STATE REFORM SCHOOL.

ARTICLE 1.—THE PENITENTIARY.

§ 8512. Penitentiary at Bismarck. Continuation and use. The penitentiary located at Bismarck in the county of Burleigh, shall continue to be the general penitentiary and prison of this state, for the punishment and reformation of offenders against the laws thereof, and in which shall be securely confined, employed and governed in the manner provided by law, all offenders who have been or may be convicted or sentenced according to law, to the punishment of imprisonment or confinement therein. §§ 1, 10, c. 30, Sp. 1883, am'd.

§ 8513. Within jurisdiction of Burleigh county. The said penitentiary and the grounds and precincts thereof, for the purpose of all judicial proceedings shall be deemed to be within and a part of the county of Burleigh, and the courts of said county shall have jurisdiction of all crimes or public offenses committed within the same. § 11, c. 30, Sp. 1883, am'd.

§ 8514. Who may serve process within. All process to be served within the grounds or precincts of said penitentiary, either upon persons confined therein or committed thereto, or upon persons or officers employed within the grounds or precincts of said penitentiary, except the warden, shall be served and returned by the warden; provided, that all persons committed to the penitentiary, and all persons or officers in charge of or caring for, any inmates or persons committed to said penitentiary, at any place, shall be deemed to be § 12, c. 30, Sp. 1883, am'd.

within the grounds and precincts thereof. All officers and employees of the penitentiary shall be exempt from serving upon juries in any of the courts of this state.

ARTICLE 2. — STATE REFORM SCHOOL.

§ 1, c. 164, 1890.
am'd.

§ 8515. State reform school at Mandan. Continuation and use. The state reform school located at Mandan in the county of Morton, shall continue to be the general reform and industrial school of the state for the detention, instruction and reformation of such juvenile offenders against the laws and good order thereof, of both sexes under the age of eighteen years as may be committed to it according to law for detention, instruction and discipline therein.

§ 8516. Within jurisdiction of Morton county. The said state reform school and the grounds and precincts thereof, for the purpose of all judicial proceedings shall be deemed to be within and a part of the county of Morton, and the courts of said county shall have jurisdiction of all crimes or public offenses committed within the same.

§ 8517. Who may serve process. All process to be served within the grounds or precincts of such reform school, either upon persons detained thereat or committed thereto or upon officers or persons employed within the grounds or precincts thereof, except the superintendent, shall be served and returned by such superintendent; provided, that all officers or persons in charge of or caring for, any inmate or person committed to such reform school, at any place, shall be deemed to be within its grounds and precincts. All officers and employees of the reform school shall be exempt from serving upon juries in any of the courts of this state.

ARTICLE 3. — GOVERNING BOARDS, THEIR APPOINTMENT, QUALIFICATION, ORGANIZATION AND DUTIES.

§ 2, c. 30, Sp.
1883.
§ 1, c. 93, 1889.
§ 1, c. 164, 1890.
am'd.

§ 8518. Board of management. Penitentiary. Reform school. The said penitentiary and the said reform school shall each be governed by a separate board of trustees consisting of five members to be appointed by the governor as hereinafter in this article provided, and the term of office of each trustee (except as otherwise in this article specified) shall be four years commencing on the first Tuesday of April next succeeding his appointment.

§ 1, c. 93, 1889.
§ 2, c. 164, 1890.
am'd.

§ 8519. How trustees appointed. Terms. Vacancy. The governor shall nominate, and by and with the advice and consent of the senate, appoint, during the regular session of the legislative assembly held in 1895, five trustees of each of such institutions, of whom two shall be designated to hold their offices for the term of two years and three for the term of four years. The governor at each regular session of the legislative assembly thereafter shall nominate, and by and with the advice and consent of the senate, appoint trustees of such institutions in place of those whose terms shall thereafter first expire. Each trustee shall hold his office until his successor is appointed and qualified; provided, that the governor may fill any vacancy in either of said boards by appointment to extend only to the first Tuesday of April succeeding the next regular session of the legislative assembly; and provided, further, that the governor shall, during such next regular session of the legislative assembly, nominate.

and by and with the advice and consent of the senate, appoint a trustee to fill such vacancy for the remainder of the term unexpired. No more than two members of either of such boards shall be appointed from the same county.

§ 8520. How trustees qualify. Bond. Oath. Each of said trustees shall, before entering upon the duties of his appointment, execute a bond, jointly and severally with two or more sureties to be approved by the governor as to sufficiency and by the attorney general as to form in the penal sum of five thousand dollars, to the state of North Dakota and conditioned to the effect that he will faithfully and impartially perform the duties imposed upon him by said appointment according to law, and shall take and subscribe an oath to be indorsed upon said bond or appended thereto, that he will support the constitution of the United States, the constitution of the state of North Dakota and faithfully and impartially discharge the duties of his said appointment according to law and to the best of his ability, and said bond and oath shall be filed and retained in the office of the state treasurer. § 3, c. 164, 1890.
am'd.

§ 8521. Sessions of boards. Compensation. Payment. One session of each of said boards of trustees shall be held each month at the institution under its charge, and the sessions of either board shall not in any year exceed twenty-four days in the aggregate, but the governor may, when deemed necessary, call or authorize additional sessions of either board or limit its sessions to less than twenty-four days in the aggregate each year. Each trustee shall receive three dollars per day for each day necessarily employed in attendance upon said sessions and all traveling expenses necessarily incurred therein, to be paid upon the presentation of the proper vouchers containing an itemized statement of the number of days attendance and money actually expended as above provided, duly verified by his oath and approved by the president or secretary of the board; and the state auditor shall audit said claims and draw his warrant upon the state treasurer for the amount allowed, to be paid out of the state treasury. §§ 3, 4, c. 93,
1889.
§ 4, c. 164, 1890.
am'd.

§ 8522. Presidents of boards. Records. Visiting trustee. Duties. At the first session of either board of trustees after the appointment of new members for a full term the trustees shall choose one of their number president of the board. Each board of trustees shall keep regular records of its meetings and proceedings which shall be signed by its president and attested by its secretary, and each board shall have power from time to time, as may be deemed necessary, to appoint some member of the board as visiting trustee, and it shall be the duty of such visiting trustee, at least once in each month, to visit the institution of which he is trustee, without previous notice to the officers thereof, and inspect the books and all its concerns and ascertain whether the officers are competent and faithful and the inmates properly governed, cared for and employed, and said visiting trustee shall have power to direct any alteration or change in such matters with the assent of the board of trustees. § 16, c. 30, Sp.
1883.
§ 7, c. 164, 1890.
am'd.

§ 8523. Duties of boards. Inspect buildings. Examine inmates. Such boards of trustees respectively shall at each regular session thereof, carefully inspect the buildings, rooms, grounds and precincts of the institution under its charge, and inquire into and examine all matters connected with the government, discipline and

management thereof, the punishment and employment of the inmates; and they may, from time to time, require reports from the officers in regard to any and all of said matters. Each board of trustees shall also inquire into any improper conduct alleged to have been committed by any officer or employee and for that purpose the president of the board, by direction of the board to be entered in the records of its proceedings, is hereby empowered to issue subpoenas to compel the attendance of witnesses and the production of papers, books and writings before said board, in the same manner and with like effect as any officer or court of this state. And the said trustees may examine witnesses and persons appearing before said board, on oath, to be administered by the president of the board, or in his absence, by any other member thereof.

§ 8, c. 30, Sp.
1883.
§ 7, c. 164, 1890.
am'd.

§ 8524. General reports. Contents. Special reports.

Each of such boards shall make full and complete reports to the governor, to be by him communicated to the legislative assembly at each regular session, of all its doings, and the matters pertaining to the institution under its charge, specifying the number of officers and persons employed at the same and in what capacity and the amount paid to each, and shall also give in detail a statement of the entire business of such institution for the preceding two years including receipts from all sources and all expenditures and for what services or material the same were made, and also all the matters pertaining to the general business, improvement and discipline of such institution: also a full statement of the number of persons committed to and received into the same, and from what county received and for what crimes or cause; the number discharged therefrom and by what authority; the number that have died or escaped and the general health of the inmates. And the governor may, at any time, in writing to be left with the secretary of the board or any member thereof, call upon and require either of such boards to make to him a general report in regard to the transactions of the institution under its charge, or a special report in regard to any part thereof, and it shall be the duty of said board to make said report and deliver the same to the governor, within fifteen days from the next regular monthly meeting after said call.

§ 17, c. 30, Sp.
1883.
am'd.

§ 8525. Records open to inspection. All books, records and documents relating to the concerns and business of either of such institutions shall, at all times, be open to the examination of the board of trustees or any member thereof or any citizen of this state.

§ 21, c. 30, Sp.
1883.
am'd.

§ 8526. Officers must not be interested in contract.

Neither of said boards of trustees nor any member thereof, nor any officer, guard, agent, overseer or employee at such institution shall be pecuniarily interested or concerned directly or indirectly in any contract, either verbal or written, that may be entered into by any person or persons on behalf of the state for any purpose whatever connected with the business of such institution.

§ 8527. Inventory of personal property. Contents. Each board of trustees and the warden, or superintendent shall annually, between the first and fifteenth days of November, and at each change of warden or superintendent, make out in triplicate an inventory in detail of all the personal property at or pertaining to the institution under their charge, and belonging to the state, or in which the state has any interest; one copy of which shall be retained in the office of the warden, or superintendent, and one copy delivered to the governor and

one copy to the state auditor. Said inventory shall specify what articles or items are intended to be kept for use and what articles or items are intended for immediate consumption. Each inventory after the first shall particularly note any and all changes in, losses from or additions to the articles or items intended to be kept for use. Said inventories shall also contain a particular enumeration by name of all the books, records, reports, contracts or other papers required by law to be kept at such institution or that may be there kept, but not the certified copy of the judgment and sentence of the court ordering the imprisonment or commitment of any person, after said person is discharged.

§ 8528. Contracts. Approval. How executed. How property kept.

The warden shall make all contracts on the part of the state on account of the business of the penitentiary, and the superintendent shall make all contracts on the part of the state on account of the business of the reform school. Before such contracts shall take effect, they shall be reduced to writing and approved by the board of trustees of the institution for which they are made; provided, that when the wants or necessities of either require the immediate purchase of supplies of any kind the warden or superintendent, as the case may be, may purchase the same for the time being in open market, without any contract, or otherwise in such manner and upon such terms and conditions as in his judgment will best promote the interests of the state. All contracts lawfully made by the warden or superintendent, on account of the business of the penitentiary or reform school respectively, shall be executed in the name of the state and deemed the contracts of the state, and all property of every kind and money in charge of the warden or superintendent, or that shall come to his hands or under his control on account of the institution under his charge or from the business thereof is the property of the state and shall at all times be kept separate and apart from his own: provided, that the money and effects, except clothing, in possession of each inmate when committed to the penitentiary or reform school, shall be preserved by the warden or superintendent and returned to such inmate when discharged.

§ 22, c. 30, Sp.
1881.
am'd.

§ 8529. Supplies. Yearly contract. Proposals. The necessary provisions, fuel, lights, clothing, bedding, medicines and all other supplies and materials for such institution shall be furnished thereat by the year by contract when the same is practicable, to be made by the warden or superintendent under the direction and subject to the approval of the board of trustees, upon competitive bids, with such persons as will furnish the same on the best terms. The warden or superintendent shall publish previous notice, for at least three successive weeks, in at least two newspapers published in the state, of the articles, supplies and materials wanted, the quantity and quality thereof, as near as the same can be ascertained, the time and manner of delivery and the period during which such articles, supplies and materials shall be received; and in awarding said contracts preference shall be given to proposals from persons residing and doing business within this state.

§ 23, c. 30, Sp.
1881.
am'd.

§ 8530. Proposals in writing. Opening. Powers of board. All proposals shall be in writing and sealed and upon the day appointed in the notice provided for in the last section, which shall be a day appointed for a regular monthly meeting of the board of trustees, the proposals shall be opened by the warden or superin-

§ 24, c. 30, Sp.
1881.
am'd.

tendent, in the presence of the board of trustees and such bidders as may desire to be present, and submitted to said board. The board of trustees and the warden or superintendent, as the case may be, shall thereupon ascertain from the proposals submitted the person or persons offering the best terms and award the contract accordingly; provided, it shall appear that said proposal is as low as the fair market price, but in case no proposal is accepted notice may again be published and all proceedings had anew as hereinbefore provided; and provided, further, that the person or persons whose proposal or proposals are so accepted shall execute a written contract with the state in accordance with such proposal or proposals and give bond to the state with good and sufficient sureties, to be approved by the warden, or superintendent for the performance of such contract. The notice hereinbefore provided for shall require said bond and specify its amount, to be twice the estimated value of the articles, supplies or materials to be contracted for, but in no case shall the amount of said bond exceed the sum of three thousand dollars. The said notice shall reserve the right to accept or reject any bid or part of a bid, and require each proposal to be accompanied by a certified check for at least one hundred dollars, payable to the order of the warden or superintendent, to be forfeited to the state in case the person or persons whose proposal or proposals are accepted shall fail to execute the contract and give the bond as hereinbefore provided within fifteen days after notice of said acceptance, or otherwise in case said contract is executed and bond given or in case a proposal is not accepted, to be returned to the bidder. Any and all proposals not deemed advantageous to the state may be rejected.

ARTICLE 4. — THE WARDEN AND OFFICERS OF THE PENITENTIARY
AND THEIR DUTIES.

§§ 13, 21, c. 30,
Sp. 1883,
am'd.

§ 8531. Officers of penitentiary. Residence. The officers of the penitentiary shall be one warden who shall be its general superintendent and secretary of the board of trustees, one deputy warden who shall be chief turnkey, one bookkeeper who shall be assistant gatekeeper, and such other officers, guards, overseers, agents and employees as may be necessary. The warden and deputy warden shall reside at the penitentiary.

§ 14, c. 30, Sp.
1883,
am'd.

§ 8532. Appointment of officers. Term of office. The board of trustees of the penitentiary shall appoint the warden and may remove him at any time. The term of office of the warden, unless sooner removed by the board of trustees, shall be two years and until his successor is appointed and qualified. All other officers and employees shall be appointed by the warden, subject to the approval of the board of trustees, and shall hold office during the pleasure of the warden.

§ 19, c. 30, Sp.
1883,
am'd.

§ 8533. Warden, how shall qualify. Other officers. The warden shall, before entering upon the duties of his appointment, execute a bond, jointly and severally, with two or more sureties, to be approved by the board of trustees, in the penal sum of fifteen thousand dollars, to the state of North Dakota and conditioned to the effect that he will faithfully and impartially perform the duties imposed upon him by such appointment and according to law, and that he will, at all times, faithfully account for all moneys and property that shall come to his hands or under his control by virtue of

his office or under color thereof, and shall also take and subscribe an oath, to be indorsed upon said bond or appended thereto, that he will support the constitution of the United States, the constitution of the state of North Dakota and faithfully and impartially discharge the duties of his appointment according to law and to the best of his ability, and said bond and oath shall be filed and retained in the office of the state treasurer. And each of the other officers and employees shall, before entering upon the duties of his appointment, take and subscribe an oath of like import and such oath shall be filed and retained by the warden. The board of trustees may require the warden to execute and file a new and additional bond, with other and satisfactory sureties, in a larger sum than that specified above whenever in its judgment it may be deemed necessary.

§ 8534. **Salary of warden. Other officers.** The warden shall receive a salary to be fixed by the board of trustees but not to exceed two thousand dollars per annum, and all other officers and employees such amounts as the board of trustees may, from time to time, determine and establish.

§ 15, c. 30, Sp.
1883.
am'd.

§ 8535. **Powers and duties of warden. Visitors. Records.** It shall not be lawful for both the warden and deputy warden to be absent from the penitentiary at the same time, except by permission of the board of trustees, but in such case such board shall in its discretion designate one of its number to act as warden during such absence. The warden shall, under the direction of the board of trustees, have the charge, custody and control of the penitentiary and the persons committed thereto, together with all lands, buildings, furniture and tools, implements, stock and provisions and every other species of property pertaining thereto or within the precincts thereof, and shall superintend and be responsible for the police of the penitentiary and the discipline of the inmates; he shall keep and preserve accurate records of all the meetings of the board of trustees; he may make such rules and regulations for the admission of visitors, including a gate fee for their admission as may be deemed necessary, subject to the approval of the board of trustees, and may designate days for the admission of visitors and limit such days to not less than two in each week. The warden shall be his own clerk and keep a correct record of all transactions of his office and a correct account of all his doings; he shall keep a daily journal of the proceedings of the penitentiary, in which he shall note all infractions of the rules and regulations thereof by any officer or employee, and shall enter in such journal a memorandum of every complaint made by any inmate, of cruel or unjust treatment by any officer or other person, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any of the inmates, naming him and specifying the offense, and the punishment, if any, inflicted therefor, and said journal and memorandum shall be laid before the board of trustees at every meeting.

§ 18, c. 30, Sp.
1883.
am'd.

§ 8536. **Warden to make rules and regulations.** The warden shall make such rules and regulations not inconsistent with the laws of this state, for the government of the officers, employees and inmates of the penitentiary, as he may deem necessary and proper, subject to the approval of the board of trustees, and he may, from time to time, with the approval of the board of trustees make such changes in said rules and regulations as he may deem necessary and a printed copy of the rules and regulations of the penitentiary

§ 20, c. 30, Sp.
1883.
am'd.

shall be furnished to each and every person committed to the penitentiary at the time he is received, and to each and every officer, overseer, guard and employee thereof at the time he is appointed and sworn, and ten copies to the state library for the use of the state officers and the public.

§ 8537. Deputy warden. Bond. Duties. Whenever there is a vacancy in the office of warden or the warden is absent, all the duties of the warden shall devolve upon and be performed by the deputy warden until the vacancy is filled or the warden returns. The deputy warden before entering upon the duties of his appointment shall execute a bond to the state in the sum of ten thousand dollars conditioned to the effect that he will at all times faithfully and impartially discharge the duties of his appointment according to law and the rules and regulations of the penitentiary.

§ 8538. Whom employed as chaplain. Compensation. The warden shall employ the resident clergymen of Bismarck or its vicinity of all denominations, to officiate alternately as chaplain at the penitentiary at a sum not exceeding five dollars per week.

§ 29, c. 30, Sp.
1883.
am'd.

§ 8539. Duties of employees. Acts prohibited. All officers and persons employed in and about the penitentiary shall perform such duties in the oversight and charge thereof, the use and care of the property belonging thereto, and the custody, discipline, government and employment of the inmates as shall be required of them by the warden, in conformity to law and the rules and regulations of the penitentiary; and no such officer or employee shall be engaged directly or indirectly in procuring a pardon for any person confined therein. Any officer or employee violating the provisions of this section shall be immediately removed.

ARTICLE 5.—HOW PERSONS COMMITTED TO THE PENITENTIARY.

§ 27, c. 30, Sp.
1883.
am'd.

§ 1, c. 57, 1885.
am'd.

§ 8540. Sheriffs. Commitments to penitentiary. The sheriff of each county, or some person appointed by the court, shall convey to the penitentiary all persons convicted in his county and sentenced to be confined in said penitentiary, and as soon as may be after such conviction and sentence shall have been had; and after delivering such person or persons to the warden, together with a copy of the judgment and sentence of the court ordering such imprisonment certified by him, the warden shall deliver to such sheriff a receipt in which he shall acknowledge the delivery to him of such person, naming him, and the sheriff shall return said receipt to the clerk of the court where said conviction and sentence were had and said clerk shall file and retain the same in his office; and it shall be the duty of the warden to receive any person so convicted, sentenced and delivered to him, and such person to retain and confine and imprison in the penitentiary until the expiration of the term of his sentence or until otherwise lawfully entitled to be released. It shall also be the duty of the warden immediately upon receipt of any person committed to the penitentiary to enter in a book to be by him kept for that purpose and as an official record of the penitentiary, the name, age, sex, color, height and nationality and each and every other fact, characteristic and condition, natural or artificial, that may in any way tend to aid in the identification of such person.

§ 28, c. 30, Sp.
1883.
am'd.

§ 8541. Inmates of penitentiary in custody of warden. All inmates of the penitentiary shall be in the charge and custody of the warden and he shall care for, govern and employ them in the

manner prescribed by law, the rules and regulations of the penitentiary and in conformity to the respective sentences under which they are confined.

ARTICLE 6. — DIMINUTION OF SENTENCE FOR GOOD CONDUCT.

§ 8542. Diminution regulated. Powers of trustees. Every person committed to the penitentiary under sentence other than for life, who shall, at the end of the first month of his imprisonment, have no infraction of the rules and regulations thereof recorded against him, shall be entitled to a diminution of two days from the term of his sentence; and if at the end of the second month no infraction of said rules and regulations is recorded against him, a diminution, for that month of four days from the term of his sentence, and if he shall continue to have no such record against him for the third month a diminution of six days from the term of his sentence; and thereafter he shall be entitled to six days diminution from the term of his sentence for each month in which he shall have no such record against him; and it shall be the duty of the warden to discharge any such person from the penitentiary when he shall have served the time of his sentence less the number of days he may be entitled to have deducted therefrom for his good behavior as hereinbefore provided, and in the same manner and as if no such deduction had been made; provided, that if any person committed to the penitentiary shall be guilty of the violation of any of the rules and regulations thereof, after he shall, as provided in this section, have become entitled to a diminution of the term of his sentence, the board of trustees may and are hereby empowered, at its discretion, to deprive such person of a portion or all, (according to the flagrancy of his infraction of the rules and regulations) of the diminution of the term of his sentence and the determination of the board of trustees in that regard shall be entered at length in the record of its proceedings and a copy thereof delivered to the offender by the warden; and provided, further, that any person confined in the penitentiary at the taking effect of this code shall be entitled to the benefits of this section for the remainder of the term of his sentence at the rate of six days diminution per month for good behavior.

§ 8543. Warden to keep record. Certificate of good conduct. The warden shall keep a true record of the conduct of each inmate of the penitentiary, specifying each infraction of the rules and regulations thereof and at the end of each month he shall give to each inmate who shall require it and against whom no infraction of the rules and regulations is recorded, a certificate of good conduct and therein specify the number of days by which the term of such inmate's sentence is diminished, as hereinbefore provided, by such good conduct; provided, that in case any inmate shall believe he has not been fairly or justly treated by the warden or any officer of the penitentiary in the keeping of said record he shall, upon request, be taken before the board of trustees at any regular monthly meeting and it shall be the duty of said board to hear and carefully investigate any complaint in regard to said record and require the same to be corrected as may be just, and the determination of the board shall be entered at length in the record of its proceedings, and a copy thereof given to said inmate by the warden.

§ 41, c. 30, Sp.
1881.
am'd.

§ 49, c. 30, Sp.
1883,
am'd.

§ 8544. Reward for good behavior. Whenever any inmate of the penitentiary, by continued good behavior, diligence in labor or study or otherwise, shall surpass the general average of the inmates, he may be compensated therefor at the discretion of the governor in addition to the diminution of the term of his sentence hereinbefore provided for, upon the recommendation in writing of the board of trustees, either by the further diminution of the term of his sentence, or by the payment of money or by both.

§ 42, c. 30, Sp.
1883,
am'd.

§ 8545. Punishment for infraction may be alleviated. Whenever any person committed to the penitentiary, and as a punishment for any infraction of the rules and regulations thereof, is being deprived of any of the ordinary privileges enjoyed by the other inmates, periodically or otherwise, shall conduct himself in a peaceful, obedient and industrious manner, the board of trustees may suspend the further infliction of such punishment during his good behavior.

ARTICLE 7. — DISCIPLINE, EMPLOYMENT AND DISCHARGE OF INMATES.

§ 31, c. 30, Sp.
1883,
am'd.

§ 8546. Employment and discipline of inmates of penitentiary. All persons sentenced to the punishment of imprisonment in the penitentiary and committed thereto shall be constantly employed for the benefit of the state. No communication shall be allowed between such persons and any person without the penitentiary except under such supervision as may be prescribed by the rules and regulations thereof. No person shall, without the consent of the warden bring into or carry out any writing or any information to or from any inmate of the penitentiary. Persons committed to the penitentiary shall be confined in separate cells at night, whenever there are cells sufficient, and in the daytime all intercourse between them shall be prevented as far as practicable. All communications between male and female inmates shall be prevented.

§ 33, c. 30, Sp.
1883,
am'd.

§ 8547. Spirituous liquors prohibited. Physician's orders. No spirituous or fermented liquors shall, under any pretense whatever, be brought into the penitentiary or upon the grounds except by the direction in writing of the physician and the fact noted in the journal of that day; nor shall spirituous liquors or any article of indulgence be allowed any inmate except by order of the physician, which order shall be in writing and for a definite and limited period. The warden may, in his discretion, make a moderate allowance of tea, coffee or tobacco to inmates as a reward for industry and good behavior.

§ 32, c. 30, Sp.
1883,
am'd.

§ 8548. Food of inmates of penitentiary. The daily sustenance of the inmates of the penitentiary not in the hospital, shall consist of wholesome coarse food, with such proportions of meats and vegetables as the warden shall deem best for the health of the inmates.

§ 34, c. 30, Sp.
1883,
am'd.

§ 8549. Beds and clothing of inmates. The clothing and bedding of the inmates shall be of such quality and quantity as the warden may direct, regard being had to their health and comfort.

§ 35, c. 30, Sp.
1883,
am'd.

§ 8550. Warden to maintain discipline. Assistance. All necessary means shall be used, under the direction of the warden, to maintain order in the penitentiary, enforce obedience, suppress insurrections and effectually prevent escapes, even at the hazard of life, for which purpose he may at all times, command the aid of the officers of the penitentiary and of the citizens outside the precincts thereof and any citizen refusing to obey such command shall be

liable to such fines, penalties and forfeitures as apply to persons refusing to obey a sheriff or other officer calling upon the aid of the county to assist in serving process or for quelling an insurrection.

§ 8551. Refractory inmates may be restrained. Whenever any inmate of the penitentiary offers violence to any officer or guard thereof or to any other person or inmate, either within the grounds or precincts of the penitentiary or at any place where said inmate may be or may be employed, or attempts to do any injury to the buildings or any workshop or to any appurtenances thereof, or disobeys or resists any reasonable command of any officer or guard, such officers and guards shall use all reasonable means to defend themselves, and to enforce the observance of discipline.

§ 8552. Uniform kindly treatment of inmates. The warden and all officers of the penitentiary shall uniformly treat the inmates thereof with kindness, and the warden shall require of the officers and guards that, in the execution of their respective duties, they shall in all cases refrain from boisterous and unbecoming language in giving their orders and commands. There shall be no corporal or other painful or unusual punishment inflicted upon the inmates of the penitentiary for violation of the rules and regulations thereof.

§ 36, c. 30, Sp.
1883.
am'd.

§ 8553. Discharge of inmates. Clothing. Employment. Every person committed to the penitentiary shall, when discharged, be provided with a decent suit of clothes and a sum of money, not to exceed five dollars, and also transportation to the place where he received sentence. He may be allowed employment at or in the penitentiary, under the rules and regulations established for the government of the inmates, for such period of time and at such rate of compensation, as the warden shall deem proper and equitable; provided, that any person so discharged who has no infractions of the rules recorded against him, may be employed by any lessee of the workshop at the penitentiary for such time and for such wages and in such manner as may be agreed upon and approved by the warden; provided, however, that no person discharged from the penitentiary shall, in any way, be given supervision or authority over any inmate thereof.

§ 38, c. 30, Sp.
1883.
am'd.

§ 8554. Employment of inmates. Escapes. If the warden shall at any time deem it for the interest of the state, he may employ the inmates of the penitentiary outside the yard thereof in cultivating and improving any ground belonging thereto or in doing any work necessary to be done in the prosecution of the business of the penitentiary, or in the erection, repair or improvement of any or all the state buildings at Bismarck including the executive mansion, and the grounds of such buildings and mansion; and in all such cases the warden shall detail such force from the officers, guards and employees of the penitentiary as he shall deem necessary to watch and guard them; and in case any person committed to the penitentiary and so employed as in this section provided, shall escape, he shall be deemed to have escaped from the penitentiary proper and punished accordingly; provided, however, that the warden shall be held responsible for the escape of any such person through the negligence of himself or any of his subordinates.

§ 40, c. 30, Sp.
1883.
am'd.

ARTICLE 8. — ESCAPES.

§ 43, c. 30, Sp.
1883.
am'd. **§ 8555. Escapes generally. Rewards. Payment.** When any inmate escapes from the penitentiary the warden shall use every means at his command for the apprehension of such person and for that purpose he may offer a reward, not to exceed one hundred dollars, and not less than twenty-five dollars; provided, that if such escape was by reason of the negligence of the warden or any officer under him, the reward thus offered shall be paid by the warden, and the board of trustees are hereby empowered finally to determine the liability of the warden for any such reward. The warden may adopt such other measures as he may deem proper, with the approval of the board of trustees, to aid in the detection and capture of persons escaping from the penitentiary.

ARTICLE 9. — PAROLE OF INMATES.

§ 1, c. 92, 1891.
am'd. **§ 8556. Board of trustees may parole. Rules. Approval.** The board of trustees of the penitentiary are hereby empowered to parole persons confined in the penitentiary and not hereinafter excepted and to establish rules and regulations under which such persons may be allowed to go upon parole outside of the buildings and inclosures thereof. The rules and regulations as established by the board of trustees shall not take effect until submitted to and approved by the governor.

§ 1, c. 92, 1891.
am'd. **§ 8557. What inmates may not be paroled.** The following described persons shall not under any circumstances be paroled from the penitentiary:

1. A person convicted and sentenced for the crime of murder either in the first or second degree.
2. A person finally convicted, in any jurisdiction, of a felony other than that for which he is being punished.
3. A person who has not served the minimum time of imprisonment prescribed by law for the crime of which he was convicted.
4. A person who has not maintained a good record at the penitentiary for at least six months previous to his parole.

§§ 2, 3, c. 92,
1891.
am'd. **§ 8558. Requirements precedent to parole.** No parole shall be granted to any person confined in the penitentiary unless:

1. The warden in writing recommends his parole to the board of trustees.
2. At least four members of the board of trustees approve and indorse said recommendation.
3. The governor approves and indorses such recommendation.
4. The friends of such person have furnished satisfactory evidence to the board of trustees, in writing, that employment has been secured for him with some responsible citizen of the state and certified to be such by the judge of the county court of the county where such citizen resides.
5. The board of trustees is convinced that he will conform to the rules and regulations adopted by said board.

§ 3, c. 92, 1891.
am'd. **§ 8559. Grounds for recommending parole.** It shall not be lawful for the warden, the board of trustees or the governor or any or either of them in considering or recommending the parole of any person confined in the penitentiary to receive, hear or entertain any petition or any argument of attorneys, but the only ground for such

recommendation shall be such person's general demeanor and record of good conduct at the penitentiary.

§ 8560. Breach of parole. Order of recommitment. Any person when on parole from the penitentiary shall be deemed to be in custody, and under control of the board of trustees and subject at any time until the expiration of the term for which he was sentenced, to be taken into actual custody and returned to the penitentiary. The board of trustees is hereby fully empowered to enforce the rules and regulations made by it for the paroling of persons committed to the penitentiary, and, at any time, when satisfactorily informed that any person out on parole has violated any of such rules and regulations, may order that such person be taken into actual custody and recommitted to and confined in the penitentiary as provided in his sentence. The board shall enter in the record of its proceedings any such order and a copy of such order certified by the secretary of the board may be delivered to any sheriff or other peace officer of the state, for service and return, and it shall be the duty of any such officer to receive the same and to apprehend and immediately return and deliver to the warden at the penitentiary any such person named in such order, and the warden shall receive and reimprison such person as upon his original sentence. § 1, c. 92, 1891.
am'd.

§ 8561. Execution of order. Fees and payment. The officer executing any such order of the board of trustees shall indorse thereon a return of his doings thereunder and the said certified copy and return, delivered to the warden with the person named therein, and the warden shall give to such officer, to be retained by him, a certificate acknowledging the receipt of such person and such certified copy of the order and his return. The fees of any officer for executing any order of the board of trustees for the return of any person to the penitentiary shall be the same as provided by law for the commitment of a person to the penitentiary under a sentence of the court, but in no case shall the fees exceed the sum of one hundred dollars. The board of trustees shall provide in its rules and regulations that any person before being paroled from the penitentiary shall deposit with the warden a sum of money not exceeding one hundred dollars to defray the expenses of his return, and the manner of auditing and paying such expenses; provided, that any money so deposited and not so used shall be returned to the person so depositing it at the expiration of the term of sentence of the person, or upon his final discharge from the penitentiary. § 1, c. 92, 1891.
am'd.

ARTICLE 10.—CONTRACTS FOR LABOR OF INMATES.

§ 8562. Warden may lease labor of inmates. Contract. Approval. The warden is authorized and empowered by and with the advice and approval of the board of trustees, from time to time, to contract for and lease the labor of such number of the able bodied persons confined in the penitentiary, together with such shop room, machinery and power as may be necessary for their proper employment, to such person or persons and for such purposes and upon such terms and conditions and for such length of time, not exceeding five years at any one time, as he shall deem most conducive to the interests of the state and the welfare of the penitentiary and the persons to be employed therefrom. § 44, c. 30, Sp.
1888.
am'd.

§ 45, c. 30, Sp.
1883.
am'd.

§ 8563. Rights to be reserved in contract of lease. In every contract or lease made pursuant to the authority conferred by this article there shall be reserved to the board of trustees of the penitentiary, and to the warden and to each and every one of his subordinates, full power and authority to prevent said contractors or lessees demanding from, or imposing upon the laborers so contracted for or leased, any unusual or severe labor, or any labor whereby the health or safety of any laborer may be impaired or jeopardized; and the warden may from time to time prescribe all needful rules and regulations for the government and conduct of such contractors or lessees, their overseers and agents in their relations to the inmates of the penitentiary, and may require and enforce the summary dismissal of any individual employed by any contractor or lessee, in or about the penitentiary, whenever it shall appear that the presence or conduct of such individual is prejudicial in any way to the discipline of the penitentiary, or the welfare of the inmates thereof.

§ 46, c. 30, Sp.
1883.
am'd.

§ 8564. Security to be required from lessee. Adequate security to the state of North Dakota, by bond, to be approved by the board of trustees, shall be exacted of all contractors or lessees, for the faithful performance of all the provisions of the contracts or leases on their part to be performed; and the board of trustees, each member thereof and the warden and his subordinates, shall use their utmost endeavors to have all the terms and conditions of any such contract or lease fully complied with; but no contractor or lessee shall have or claim from the state of North Dakota, or from the board of trustees or any member thereof, or from the warden or any of his subordinates, or from any of the funds of the penitentiary, any damages whatever, either by way of recoupment or set-off, or otherwise in law or equity, for or on account of the failure or neglect of the warden or his subordinates, to furnish to such contractor or lessee the full amount of labor or the full number of laborers specified in any such contract or lease.

§ 47, c. 30, Sp.
1883.
am'd.

§ 8565. Trustees may control warden regarding contract. The board of trustees of the penitentiary are empowered fully to control and direct the warden in the exercise of the authority conferred upon him, in regard to all contracts and leases for the labor of persons confined in the penitentiary, and of shop room, machinery and power, and may whenever, in the judgment of the board of trustees, it is impracticable or disadvantageous to the state to continue to furnish any laborers, shop room, machinery or power, to any contractor or lessee, order and direct the cancellation of any such contract or lease, and thereupon after six months' notice to such contractor or lessee, all obligations of the board of trustees or the members thereof and of the warden and his subordinates, and the state under such contract or lease, shall cease and determine, and such contractor or lessee shall not have or be entitled to any compensation whatever, for or on account of such cancellation, either by way of damages, or recoupment or set-off, or otherwise in law or equity.

§ 48, c. 30, Sp.
1883.
am'd.

§ 8566. Leases in triplicate. Disposition of. Proposals invited. All contracts or leases for the hiring or leasing of the labor of persons confined in the penitentiary, and of shop room, machinery and power, or any of them, shall be executed in triplicate, and on behalf of the state by the warden in the name of the state, and in writing, and one copy thereof delivered to the contractor or lessee, one copy to the state auditor and one copy retained by the

warden in his office at the penitentiary. Before entering into or executing any such contract or lease the warden shall, by notice published for at least three successive weeks in at least three newspapers published in this state, invite sealed proposals for the hiring and leasing of such labor, shop room, machinery and power. The time specified in said notice for the opening of said proposals shall be the day of a regular monthly meeting of the board of trustees and the place so specified shall be the warden's office at the penitentiary. All proposals received shall be opened in the presence of the board, and such other persons as may desire to be present, and immediately submitted to the board and after consideration the contract or lease shall be awarded by the warden to the highest and best bidder or bidders therefor; provided, the board of trustees so advises and directs; and provided, further, that the board of trustees and the warden shall reserve and have the right to reject any and all bids. In awarding such contract or lease, preference shall be given to persons residing and doing business within this state.

§ 8567. Record of labor and earnings. Collection. Extra work. It shall be the duty of the board of trustees and the warden to cause to be kept at the penitentiary a correct record in detail of the time of labor and the money earned by each and every person, naming him, confined therein, and the rental of any shop room, machinery and power, under any contract or lease therefor, and all money so earned and rental shall belong to the state, and said board of trustees and warden shall enforce the collection thereof when due, and it shall be the duty of the accounting officer of the penitentiary to account for and pay over all such moneys, at the times and in the manner provided by law. Whenever any industry is carried on at the penitentiary under the provisions of this article and the nature thereof is such that it is practicable for the board of trustees to establish the amount of labor constituting a day's work, it shall so do, and any inmate employed under the provisions of this article after having completed a day's work as so established shall be permitted to continue work during the remainder of the hours of employment of the day and therefor to receive in money for his own use at his discharge, or at any time upon the approval of the board of trustees, the full amount earned by him at the rate agreed upon between the inmates, doing extra work, and the contractors and lessees, subject to the approval of the board of trustees. It shall be the duty of all officers of the penitentiary to see that the provisions of this section are carried into effect.

§ 8568. Duty of accounting officer. Extra earnings of inmates. The accounting officer of the penitentiary shall within five days after the end of each month give to the state auditor and to each inmate entitled thereto under the provisions of this article a certificate, showing the amount to which such inmate is entitled for the preceding month under the provisions of the last section. The amount so earned by inmates shall be collected at the same time and in the manner provided for the collection of other sums due from the lessees or contractors and delivered to the state treasurer. The state treasurer shall retain such money as a separate fund.

§ 8569. Discharge of inmate. Payment of earnings. Whenever any inmate who has any money to his credit under the provisions of this article is discharged from the penitentiary, the state auditor upon the presentation and surrender to him of such cer-

tificates shall audit said claims and draw his warrant upon the state treasurer for the amount due thereon and the state treasurer shall pay the same on demand.

§ 8570. All contracts subject to provisions for extra earnings. All contracts and leases provided for in this article shall be subject to the provisions of the last three sections.

ARTICLE 11.—EMPLOYMENT OF INMATES OF PENITENTIARY UPON PUBLIC BUILDINGS AND ROADS.

§ 1, c. 86, 1895. **§ 8571. Employment of inmates of the penitentiary.** The board of trustees of the penitentiary of this state is hereby authorized and empowered to employ the convict labor of the state, or so much thereof as cannot be preferably otherwise employed, in the manufacture of brick, with which they are to make needed repairs, additions or improvements on the public buildings of the state.

§ 2, c. 86, 1895. **§ 8572. Trustees may purchase tools and machinery.** For the purpose of enabling the carrying out of the provisions of this article, said trustees are hereby authorized to purchase such tools and machinery as they may deem necessary.

§ 3, c. 86, 1895. **§ 8573. May be employed in improving roads and streets.** Such trustees are authorized and empowered to employ so much of said labor as they may deem necessary in macadamizing or otherwise improving the roads and streets used as approaches to the penitentiary, state capitol or other public institutions within the state, and in making such improvements such board is authorized to contract indebtedness not exceeding one thousand dollars in any one year, which shall be paid out of any money that may be received from any contract now existing or that may hereafter be made for the employment of such labor.

§ 4, c. 86, 1895. **§ 8574. Sale of products. Board therefor. Use of receipts.** Such board of trustees shall dispose of said brick manufactured as in this article provided, as they may be directed by the governor, state auditor and secretary of state, who are hereby created a board with authority to dispose of any brick manufactured by convict labor, according to their best judgment, and for the interests of the state, at such prices as said board may provide. The receipts of such sales shall be turned over to the trustees aforesaid and used in payment of the expenses incurred in connection with the manufacture of brick or building, or improving roads and streets as hereinbefore provided.

ARTICLE 12.—THE SUPERINTENDENT AND OFFICERS OF THE REFORM SCHOOL AND THEIR DUTIES.

§ 5, c. 164, 1890.
am'd. **§ 8575. Officers of the reform school.** The officers of the reform school shall be, one superintendent who shall be its general superintendent and secretary of the board of trustees, and one matron and such teachers and assistants as may be deemed necessary.

§ 5, c. 164, 1890.
am'd. **§ 8576. Appointment of superintendent. Other officers.** The board of trustees shall appoint the superintendent and may remove him at any time. The term of office of the superintendent, unless sooner removed by the board of trustees, shall be two years and until his successor is appointed and qualified. All other officers and employees shall be appointed by the superintendent, subject to

the approval of the board of trustees, and shall hold office during the pleasure of the superintendent.

§ 8577. **Superintendent, how to qualify. Subordinates.** § 9, c. 164, 1890.
am'd.
The superintendent shall before entering upon the duties of his appointment, execute a bond, jointly and severally, with two or more sureties, to be approved by the board of trustees, in the penal sum of ten thousand dollars, to the state of North Dakota, and conditioned to the effect that he will faithfully and impartially perform the duties imposed upon him by such appointment and according to law, and that he will at all times, faithfully account for all moneys and property that shall come to his hands or under his control by virtue of his office or under color thereof, and shall also take and subscribe an oath, to be indorsed upon said bond or appended thereto, that he will support the constitution of the United States, the constitution of the state of North Dakota, and faithfully and impartially discharge the duties of his appointment according to law and to the best of his ability, and such bond and oath shall be filed and retained in the office of the state treasurer. And each of the other officers, teachers and employees shall, before entering upon the duties of his appointment, take and subscribe an oath of like import and such oath shall be filed with and retained by the superintendent. The board of trustees may require the superintendent to execute and file a new and additional bond, with other and satisfactory sureties, in a larger sum than that specified above whenever in its judgment it may be deemed necessary.

§ 8578. **Salary of superintendent. Employees.** The superintendent shall receive a salary to be fixed by the board of trustees, but not to exceed two thousand dollars per annum, and all other officers and employees such amounts as the board of trustees may, from time to time determine and establish.

§ 8579. **Duties of superintendent. Records.** § 9, c. 164, 1890.
am'd.
The superintendent shall, under the direction of the board of trustees, have the charge, custody and control of such reform school and the persons committed thereto or detained thereat together with all the lands, buildings, furniture and tools, implements, stock and provisions and every other species of property pertaining thereto or within the precincts thereof, and shall superintend and be responsible for the police of such reform school and the government, discipline, instruction and control of the inmates; he shall keep and preserve accurate records of all the meetings of the board of trustees; he may make such rules and regulations for the admission of visitors, including a gate fee for their admission as may be deemed necessary, subject to the approval of the board of trustees, and may designate days for the admission of visitors and limit them to not less than two in each week. Such superintendent shall be his own clerk and keep a correct record of all transactions of his office and a correct account of all his doings; he shall keep a daily journal of the proceedings of the school in which he shall note all infractions of the rules and regulations thereof by any officer, teacher or employee and shall enter in such journal a memorandum of every complaint made by an inmate, of cruel and unjust treatment by any officer or other person, or a want of proper clothing or food, and also any infraction of the rules and regulations of the school by any of the inmates, naming him, and specifying the offense and the punishment, if any, inflicted therefor, and said journal and memorandum shall be laid before the board of trustees at every meeting.

§ 5, c. 164, 1890.
am'd.

§ 8580. Duties of subordinates. Teachers. All officers, teachers and persons employed about the reform school shall perform such duties in the oversight and charge thereof, the use and care of the property belonging thereto, and the custody, government, instruction, discipline and employment of the inmates as shall be required of them by the superintendent in conformity to law and the rules and regulations of the school.

ARTICLE 13. — COMMITMENTS TO THE REFORM SCHOOL.

§ 10, c. 164, 1890.
am'd.

§ 8581. Who may be sent to reform school. District court. Procedure. Whenever any person under the age of eighteen years, shall, in any district court of this state, be found guilty of a crime or public offense other than murder, such court may, if in its judgment, the accused is a proper subject therefor, instead of entering judgment against such person, direct by an order to be entered in the minutes of the court, that such person be committed to the state reform school for the remainder of such person's minority.

§ 11, c. 164, 1890.
am'd.

§ 8582. When convicted before inferior court. Procedure. Whenever any person under the age of eighteen years shall be convicted of any crime or public offense before a justice of the peace or court other than a district court of the state, or of being a disorderly person, such justice of the peace or other court, must forthwith send such person together with all the papers relating to the charge on file in his office, and a certified transcript of his docket entries in the action, under the charge of some peace officer, to the judge of the district court of the county. The judge shall thereupon issue an order to the parent or guardian of the accused, or to such person as may have had him in charge, or with whom he last resided, or to some person nearly related to him, if known or if there is no such person known, then to some person to be designated in the order to act as guardian for the accused for the time being, requiring such parent or other person to appear at a time and place stated in such order and show cause why the accused should not be committed to the reform school. Such order shall be served forthwith by the sheriff or other officer by delivering to and leaving with the person therein designated to be served, personally, a true copy of the same, or by leaving such copy with some person of full age at the residence or place of business of such person, and the original order immediately returned to the judge issuing it with the officer's doings indorsed thereon showing the time and manner of service. At the time and place mentioned in such order, or at such other time and place as the judge may direct, if the person designated in the order appears, in his presence, or if such person does not appear, in the presence of some other suitable person to be then appointed by the judge to act on behalf of the accused, the judge must proceed to hear such evidence regarding the question as may be produced or deemed necessary, including any voluntary statement of the accused, and if from such evidence and hearing such judge becomes satisfied that the accused ought to be committed to the reform school he may so order and issue his warrant accordingly.

§ 16, c. 164, 1890.
am'd.

§ 8583. Incurable child. Complaint. Procedure. Whenever a parent or guardian of any person under the age of eighteen years, makes a written complaint, verified by his affidavit, to the judge of the district court of the county, particularly setting forth the facts and showing that his child or ward under eighteen years of age is

habitually vagrant, disorderly or incorrigible, such judge must issue an order to any peace officer of the county commanding such officer forthwith to bring such child or ward before him at such time and place as may be specified in such order, and such officer shall forthwith execute and return such order accordingly. Upon the return of such order the judge shall examine into the charge and hear such testimony in regard thereto as he may deem necessary, including the voluntary statement of the accused, and if in his judgment the accused is a proper subject to be committed to the reform school, he shall so order and make an entry thereof upon such complaint and thereupon with the consent of such parent or guardian indorsed thereon, issue his warrant accordingly; provided, that such judge may in his discretion, require such parent or guardian to give security by an undertaking with or without sureties in the penal sum of one thousand dollars, to the state of North Dakota, for the payment of the expenses incurred upon the complaint and the commitment and maintenance of such child or ward at such reform school, but not exceeding two dollars per week.

§ 8584. Contents of order of commitment. Every order of commitment to the reform school made under any of the provisions of this article shall specify the date as near as may be at which the accused will attain majority, to be ascertained by the court or judge, and the date so ascertained and specified shall be conclusive for all purposes connected with such reform school. The judge shall cause to be transmitted to the superintendent with each person committed to the reform school, a statement of the nature of the complaint or charges together with such other particulars concerning the accused as he may be able to ascertain and deem necessary. § 14, c. 164, 1890.
am'd.

§ 8585. Execution of order. Return. Fees. A copy of the order entered in the minutes of the court as provided in section 8581, and certified by the clerk of the court under the seal of the court, or, the warrant provided for in section 8582 or 8583 of this article, shall be sufficient to authorize the officer executing it to commit the person therein named to the superintendent of the reform school within the same, and a copy of either attested by such officer and left with and retained by such superintendent shall be sufficient to authorize such superintendent to retain, control and employ such person within such reform school, its grounds and precincts until the expiration of the time specified therein. It shall be the duty of the officer executing any such order or warrant to deliver the person named therein to such superintendent at such school together with a copy of the order or warrant under which he is acting and to take such superintendent's receipt for such person, indorsed on the original order or warrant and to return such order or warrant with his doings indorsed thereon to the clerk of the court of the county in which the order was made or warrant issued, and such clerk shall file and retain the same in his office with the other papers in the case. The fees of any officer performing any service under the provisions of this article shall in all respects be the same as for like services in criminal actions.

§ 8586. Papers, where filed. Return to magistrate. In the cases provided for in section 8582 of this article if the accused is committed to the reform school, and in all cases provided for in section 8583 of this article, all the papers shall be filed with the clerk of the court of the proper county, but in the cases provided for in sec- § 15, c. 164, 1890.
am'd.

tion 8582 of this article, if the accused is not committed to the reform school, or if the accused appeals from the judgment of conviction, such accused, with all the papers in the case must be remanded to the custody of the officer to be returned to the magistrate before whom the conviction was had to be dealt with according to law.

§ 18, c. 164, 1890.
am'd.

§ 8587. Discharge for good conduct. Refractory inmates.

The board of trustees of the reform school may at any time after one year's detention of any person therein, upon satisfactory evidence of reformation and as a reward for good conduct and diligence in study, discharge any inmate therefrom, but if such inmate has no parent, guardian or other person to whom to return, such board shall first arrange for and procure some suitable person to receive, employ and care for the person so discharged without charge to the state. If any person convicted of a felony and committed to such school shall be or become incorrigible and manifestly and persistently dangerous to the good order, government and welfare of such school or the inmates thereof, the board of trustees must order such person returned and delivered to the parent or guardian or to the jailer of the county from which committed, as the case may be, and the proceedings against such person shall thereafter be resumed and continued as though no order or warrant of commitment to the reform school had been made.

§ 19, c. 164, 1890.
am'd.

§ 8588. Aiding inmates to escape. Penalty. Every person who unlawfully aids or assists any person committed to the state reform school in escaping or attempting to escape therefrom or from any officer thereof or knowingly conceals such person after so escaping, is guilty of a misdemeanor.

§ 21, c. 164, 1890.
am'd.

§ 8589. Pay of trustees suspended. No commitments until proclamation. Until such time as the legislative assembly shall, by law, make provision for the purchase or other acquisition of sufficient ground for the state reform school and the erection of buildings thereon for the use of such school, neither the board of trustees provided therefor in this chapter, or any trustee, nor any other person on account of said school shall receive or be paid for any services rendered or material or other thing furnished in regard thereto; nor shall any person be by order or warrant, or otherwise, committed thereto by any court or judge of this state, until the governor by public proclamation declares such school open therefor, but, until the governor makes such proclamation such juvenile offenders against the laws of this state as may be convicted of any crime or public offense in a district court of this state, may be committed to and confined in the reform school at Plankinton, South Dakota, or a reform school in any other state with which this state may contract, in the manner provided in the law governing said school.

ARTICLE 14. — INSANE INMATES.

§ 50, c. 30, Sp.
1883.
am'd.

§ 8590. Insane inmate of penitentiary or reform school.

Whenever it shall appear to the satisfaction of the governor by the representations of the warden of the penitentiary or the superintendent of the reform school and the board of trustees of the institution under its charge, that any person confined therein has become insane during such confinement, and is still insane, it shall be the duty of the governor to make inquiry in regard thereto, and if he shall determine that such person has become and is insane, he shall order and direct that such person be taken from such institution and confined

and treated in the state hospital for the insane, and that upon his recovery from such insanity, if before the expiration of the term for which he is committed, he be returned to such institution; and it shall be the duty of the warden or superintendent, as the case may be, to deliver such insane person to the superintendent of such hospital within the same, and said superintendent to receive such person into such hospital upon the presentation of the order of the governor therefor and in obedience thereto, and the expense of so transferring any person to the state hospital for the insane and his return shall be audited by the state auditor and paid, upon his warrant, out of the state treasury.

§ 8591. Transfer to hospital for the insane. Return. It shall be the duty of the warden or superintendent to deliver to the superintendent of the state hospital for the insane, with the person so ordered transferred as herein provided, a correct copy of the order of the governor directing such transfer and of the superintendent of such hospital to deliver to the warden or superintendent a certificate acknowledging the receipt of such person and said copy. The original order of the governor and said certificate shall be retained by the warden or superintendent and filed in his office at the institution in his charge. It shall be the duty of the superintendent of such hospital to notify the warden or superintendent of the recovery of any person transferred as herein provided, and of the warden or superintendent thereupon, if the term of sentence of such person has not expired, to return him to the proper custody. If the term of commitment of any person so transferred has expired at the time of his recovery, the warden or superintendent may direct that he be released from further custody, by the superintendent of said hospital; provided, that it shall be the duty of the warden or superintendent to provide any person so released with the same allowance of clothing, money and transportation to which other persons discharged from the penitentiary or reform school, are entitled.

§ 50, c. 30, Sp.
1883.
am'd.

ARTICLE 15. — DECEASE OF INMATES.

§ 8592. Death of inmate of penitentiary or reform school. Inquest. In case of the death of any person confined in the penitentiary, or state reform school, it shall be the duty of the warden or superintendent immediately to notify the coroner of Burleigh or Morton county, as the case may be, or when there is no coroner or in case of his absence or inability to act, some justice of the peace of the county, and it shall be the duty of such coroner or justice of peace so notified, as the case may be, immediately to take possession of the body of said deceased and remove the same from the penitentiary or reform school and said body retain for at least twenty-four hours, and to hold an inquest thereon and inquire carefully into the cause of said deceased's death, in the manner provided by law in cases of persons supposed to have died by unlawful means: but no officer or employee of the penitentiary or reform school shall be placed or permitted to serve on the jury at said inquest.

§ 8593. Inquest open to all persons. The inquest herein provided for shall be open to all persons who may wish to attend the same, under such rules and regulations as the officer holding the same may establish for the orderly conduct of the business. All persons may be excluded from the presence of the body of the deceased

whenever there is danger of contracting or spreading a contagious disease and all spectators may be excluded from the room where said inquest is being held while any officer, employee or inmate of the institution is being examined.

§ 8594. Who may be required to testify. Procedure. The officer holding such inquest may require any inmate of the penitentiary or reform school to testify at said inquest, and it shall be the duty of the warden or superintendent to produce before such inquest any inmate of the penitentiary or reform school so required to testify, upon the written request of the officer holding said inquest. Any such inmate shall be accompanied by such officer or officers as the warden or superintendent may designate, and as may be necessary to prevent his escape, and when no longer required before said inquest, must be immediately returned. The testimony of each witness taken at said inquest shall be reduced to writing under the order of the officer holding such inquest, and subscribed by the witness. The proceedings of the jury shall be as provided in other cases of inquest held by the coroner.

§ 8595. Return of inquest. Burial of body. The officer holding such inquest shall, within ten days after its conclusion, return the inquisition of the jury, the written testimony of the witnesses, and a list of the witnesses who testified to material matter at such inquest, to the clerk of the district court of said Burleigh or Morton county, as the case may be, and it shall be the duty of said clerk to file and retain the same in his office as a public record. It shall be the duty of the officer holding such inquest to cause the body of the deceased to be decently buried, or delivered to the relatives or friends of such deceased if by them demanded within twenty-four hours after the receipt of such body by him, or at any time before its burial.

§ 8596. Expenses. Duty of state auditor. Payment. The officer holding such inquest shall make an itemized statement and report in detail of the expenses of such inquest specifying to whom, and for what fees, services or supplies payable and the same verify by his oath, but in no case shall the expense of the burial of said body, exclusive of the fees allowed by law to officers, jurors, physicians and witnesses, exceed the sum of forty dollars; and the state auditor shall audit all claims for any such inquest when presented as herein provided, and draw his separate warrants upon the state treasurer for the amount allowed to each person named in such statement and report, and said warrants shall be paid out of the state treasury. The fees of the officer holding said inquest and of the jurors, physicians and witnesses, shall be the same as in other cases of inquests, provided that no officer of the penitentiary or of the reform school nor inmate thereof, shall be entitled to fees or other allowance on account of any services rendered at said inquest.

§ 8597. Effects of deceased. Sale. Money received. It shall be the duty of the warden or superintendent within ten days after the decease of any person confined in the penitentiary or reform school, to report in writing to the state treasurer the money and effects in his hands belonging to the deceased, and with said report to transmit to the state treasurer any such money. The state treasurer shall receive such report and money and execute and give to the warden or superintendent a receipt therefor. The state treasurer may require the warden or superintendent to sell the effects of the

deceased in his hands and direct the manner of said sale or, in his discretion, that the warden or superintendent deliver said effects to the legal representatives of the deceased, and it shall be the duty of such officer to carry out the requirements and directions of the state treasurer in that regard. If said effects are sold, all moneys received therefor shall be delivered to the state treasurer as herein provided for the money of the deceased. The state treasurer shall place all money received on account of any such deceased person, to the credit of the state. If said money is claimed within six years by the legal representatives of the deceased, the state treasurer must pay it to them after deducting the expenses of the inquest upon and the burial of the body of the deceased.

CHAPTER 18.

COUNTY JAILS.

§ 8598. Judges of district courts shall prescribe rules for jails. § 612, C. Cr. P. The judges of the district courts of the several judicial districts of this state, shall from time to time, as they may deem necessary, prescribe in writing, rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects:

1. The cleanliness of the inmates.
2. The classification of the inmates in regard to sex, age, and crime, and also persons insane, idiots and lunatics.
3. Beds and clothing.
4. Warming, lighting and ventilation of the jail.
5. The employment of medical and surgical aid when necessary.
6. Employment, temperance and instruction of the inmates.
7. The supplying of each inmate with a bible.
8. The intercourse between inmates and their counsel and other persons.
9. The punishment of inmates for violation of the rules of the jail.

10. Such other regulations as said judges may deem necessary to promote the welfare of said inmates; provided, that such rules shall not be contrary to the laws of the state.

§ 8599. Rules printed. How disposed of. § 613, C. Cr. P. am'd. The said judges shall, as soon as practicable, cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners, forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules to the secretary of state, who may file away and preserve the same.

§ 8600. Sheriff to post rules. § 614, C. Cr. P. The sheriff shall, on the receipt of said rules, cause a copy thereof to be posted up and continued in some conspicuous place and in each and every room or cell of said jail.

§ 615. C. Cr. P.

§ 8601. Judges may amend rules. The judges aforesaid may, from time to time, as they may deem necessary, revise, alter or amend said rules, and such revised rules shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by sections 8599 and 8600 of this chapter.

§ 616. C. Cr. P.

§ 8602. Sheriff to have charge of the jail. The sheriff, or, in case of his death, removal or disability, the person by law appointed to supply his place, shall have charge of the county jail of his proper county, and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform in all respects, to the rules and directions of said district judge above specified, or which may, from time to time, by said judge be made and communicated to him by said commissioners.

§ 617. C. Cr. P.
am'd.

§ 8603. Sheriff shall keep jail register. Contents. The sheriff or other officers performing the duties of sheriff of each county of this state, shall procure, at the expense of the proper county, a suitable book, to be called the jail register, in which the said sheriff, by himself or his jailer, shall enter:

1. The name, age, sex, abode and nativity of each person committed to the jail, with the date and cause of his commitment.
2. By what authority committed, and if committed for a criminal offense, a description of his person.
3. The date and manner of his discharge and by what authority, and if any inmate escapes, particularly, the time and manner of such escape.
4. What sickness or disease has occurred, if any, in the jail during the year, and, if known, what were the causes thereof.
5. Whether any, or what labor has been performed by the inmates and the value thereof.
6. The practice observed during the year of whitewashing and cleansing the occupied cells or apartments, and the time or seasons of so doing.
7. The habits of the inmates as to personal cleanliness, diet and order.
8. The means furnished or permitted to inmates for literary, moral and religious instruction, and for labor.
9. All other matters required by the rules, or in the discretion of the sheriff deemed proper; the said sheriff or other officers performing the duties of sheriff, shall carefully keep and preserve such jail register, in the office of the jailer of his proper county, and at the expiration of his term of office shall deliver the same to his successor in office.

§ 618. C. Cr. P.
am'd.

§ 8604. Sheriff shall make jail report. The sheriff or other officer performing the duties of sheriff, shall on or before the first Monday of November in each year, make out in writing from the jail register, a jail report in triplicate, one copy of which report he shall forthwith file in the office of the clerk of the district court of his county, one copy with the county auditor of his county, for the use of the commissioners thereof, and one copy of such report he shall transmit to the governor of the state, and it shall be the duty of the governor to communicate the reports of the several sheriffs of this state to the legislative assembly, on or before the tenth day of each of its sessions.

§ 619. C. Cr. P.
am'd.

§ 8605. Charge to grand jury regarding jails. It shall be the duty of the district court to give this chapter in charge of the

grand jury at each term of said court at which a grand jury is impaneled and bring before them all rules, plans or regulations established by the district judge relating to the jail of the county and prison discipline which shall then be in force.

§ 8606. Duty of grand jury to visit jail and report. The grand jury of each county in this state shall, once at each term of the district court, while in attendance, visit the jail, examine its state and condition, examine and inquire into the discipline and treatment of prisoners, their habits, diet and accommodations, and it shall be their duty to report to said court, in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this act have been violated. It shall also be the duty of the county commissioners of each county in this state to visit the jail of their county once during each of their regular meetings of each year. § 620, C. Cr. P.

§ 8607. Duty of county board regarding jails. It shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cells or apartments, beds and bedding, night buckets and such other permanent fixtures and repairs as may be prescribed by the district judge; said commissioners shall also have power to appoint a physician to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury; and said medical officer, or any physician or surgeon who may be employed in the jail, shall make a report in writing whenever required by said commissioners, district judge or grand jury. § 621, C. Cr. P.

§ 8608. Sheriff to provide board and necessities. It shall be the duty of the sheriff of each county to provide fuel, bed-clothing, washing, nursing when required, and board generally, and all necessities for the comfort and welfare of said prisoners, as the said judge by his said rules shall designate for all persons confined by law, and he shall be allowed such reasonable compensation for services required by the provisions of this chapter, as may be prescribed by the county commissioners of their respective counties; provided, that the county commissioners at the expense of their county may arrange for the detention of any prisoner of their county in the jail of some other county, whenever in their judgment such detention would be less expensive than his detention in their county. § 622, C. Cr. P. am'd.

§ 8609. Duty of sheriff to visit jail monthly. The sheriff shall visit the jail in person, and examine into the condition of each prisoner at least once each month, and once during each term of the district court; and it is hereby made his duty to cause all the cells and rooms used for the confinement of prisoners to be thoroughly white-washed at least three times in each year. § 623, C. Cr. P.

§ 8610. Jailer must be deputy sheriff. The jailer or keeper of the jail shall, unless the sheriff elects to act as jailer in person, be a deputy appointed by the sheriff, and such jailer shall take the necessary oaths before entering upon the duties of his office; provided, the sheriff shall in all cases be liable for the negligence and misconduct of the jailer as of other deputies. § 624, C. Cr. P.

§ 8611. Sheriff. Jailer. Neglect of duty. If the sheriff or jailer having in charge any county jail, shall neglect or refuse to conform to the rules and regulations established by the judge, or to any other duty required of him by this chapter, he shall on conviction § 625, C. Cr. P. am'd.

thereof in a criminal action prosecuted under the provisions of this code as other criminal actions, for each case of such failure or neglect of duty as aforesaid, be punished by a fine of not less than ten nor more than one hundred dollars.

CHAPTER 19.

PRISONS AND IMPRISONMENT FOR OFFENSES.

§ 627, C. Cr. P.
am'd.

§ 8612. Common jails established as prisons. The common jails now erected or which shall hereafter be erected in the several counties in this state shall be used as prisons:

1. For the detention of persons charged with offenses, and duly committed for trial.

2. For the detention of persons who may be duly committed, to secure their attendance as witnesses on the trial of any criminal cause.

3. For the confinement of persons pursuant to a sentence, upon a conviction for an offense, and of all other persons duly committed for any cause authorized by law.

4. For the confinement of persons who may be sentenced to imprisonment in the penitentiary, until a suitable prison shall be provided.

§ 628, C. Cr. P.
am'd.

§ 8613. Commitment when no jail in county. Whenever there is no jail erected in any county, every judicial or executive officer of such county who shall have power to order, sentence or deliver any person to the county jail, may order, sentence or deliver such person to the jail of any adjoining county; and the jailer of any such adjoining county shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced or delivered to him by any officer or court of his own county. The county from which such prisoner was taken shall pay all the expenses of keeping and maintaining him in said jail.

§ 630, C. Cr. P.
am'd.

§ 8614. County commissioners are jail inspectors. The county commissioners of the respective counties of this state shall be inspectors of the jails in their several counties and shall visit them at least once in each year, and shall examine fully into the condition of such jail, as to health, cleanliness and discipline; and the keeper thereof shall lay before them the jail register required to be kept by the provisions of section 8603 of this code; and if it shall appear to such inspectors that any of the provisions of law have been violated or neglected, they shall forthwith give notice to the state's attorney of the county and to the judge of the district court.

§ 631, C. Cr. P.
am'd.

§ 8615. No liquor shall be allowed prisoners. No sheriff, jailer or keeper of any jail, shall, under any pretense, give, sell or deliver to any person confined therein for any cause whatever, any spirituous liquor, or any mixed liquor, part of which is spirituous, or any wine, cider or strong beer, unless a physician certifies in writing that the health of such person requires it, in which case he may be allowed the quantity prescribed and no more. And no sheriff, jailer

or keeper as aforesaid, shall put up or keep in the same room, cell or apartment, male and female inmates together.

§ 8616. **Penalty. Sheriff violating last section.** If any sheriff, jailer or keeper of any prison, shall sell or deliver to any prisoner in his custody, or shall willingly or negligently suffer any such prisoner to have any liquor, prohibited in section 8615 of this chapter, or shall place or keep together prisoners of different sexes contrary to the provisions of said section 8615 he shall in each case forfeit and pay for the first offense the sum of twenty-five dollars, and such officer shall, on a second conviction, be further sentenced to be incapable of holding the office of sheriff, deputy sheriff, jailer or keeper of any prison, for the term of five years. § 632, C. Cr. P.

§ 8617. **Penalty. Other person violating said section.** If any person, other than is mentioned in the preceding section, shall sell or deliver to any person committed for any cause whatever, any liquor prohibited in this chapter, or shall have in his possession, in the precincts of any prison, any such liquor, with intent to carry or deliver the same to any prisoner confined therein, he shall be punished by fine not exceeding fifteen dollars. § 633, C. Cr. P.

§ 8618. **Jailer's duty to keep jail clean.** The keeper of such prison shall see that the same is constantly kept in a cleanly and healthful condition, and shall see that strict attention is constantly paid in the personal cleanliness of all the prisoners in his custody, as far as may be, and shall cause the shirt of each prisoner to be washed at least once in each week; each prisoner shall be furnished daily with as much clean water as he shall have occasion for, either for drink or for the purpose of personal cleanliness, and with a clean towel once a week, and shall be served three times each day with wholesome food, which shall be well cooked and in sufficient quantity. § 634, C. Cr. P.

§ 8619. **Bible shall be furnished each inmate.** The keeper of each prison shall provide, at the expense of the county, for each prisoner under his charge who may be able and desirous to read, a copy of the bible or new testament, to be used by such prisoner at proper seasons during his confinement, and any minister of the gospel, disposed to aid in reforming the prisoners and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times. § 635, C. Cr. P.

§ 8620. **Sheriff shall furnish court with copy of jail register.** At the opening of each term of the district court within his county, the sheriff shall return a copy of the entries in his jail register made since the last preceding term under his hand to the judge holding said court, and if any sheriff shall neglect or refuse so to do, he shall be punished by fine not exceeding three hundred dollars. § 637, C. Cr. P. am'd.

§ 8621. **How jails shall be constructed.** In the jails erected or which shall be hereafter erected in this state, there shall be provided sufficient and convenient apartments for confining prisoners not criminal, separate from felons and other criminals, and also for confining persons of different sexes, separate and apart from each other. § 638, C. Cr. P.

§ 8622. **Imprisonment at hard labor.** Whenever any person shall be confined in any jail pursuant to the sentence of any court, if such sentence or any part thereof shall be that he be confined at hard labor, the sheriff of the county in which such person shall be confined shall furnish such convict with suitable tools and materials to work with, if, in the opinion of the said sheriff, the said § 640, C. Cr. P. § 1, c. 36, 1879. am'd.

convict can be profitably employed either in the jail or yard thereof, and the expense of said tools and materials shall be defrayed by the county in which said convict shall be confined, and said county shall be entitled to his earnings. And the said sheriff, if in his opinion the said convict can be more profitably employed outside of said jail or yard, either for the county or for any municipality in said county, it shall be his duty so to employ said convict either in work on public streets or highways or otherwise, and in so doing he shall take all necessary precautions to prevent said convict's escape, by ball and chain or otherwise, and fifty per cent of the profits of such employment, after paying all expenses incident thereto, may be retained by said sheriff as his fees therefor, the balance to be paid into the treasury of the proper county to the credit of the general fund; and when a convict is imprisoned in the county jail for nonpayment of a fine he may be employed by said sheriff as provided in this chapter; and in case any convict employed outside of the jail yard shall escape, he shall be deemed to have escaped from the jail proper.

§ 2, c. 36, 1879. **§ 8623. Court may sentence to hard labor.** Any court, justice of the peace, police court or police magistrate, in cases when such courts have jurisdiction under the laws of this state, or as provided by the ordinances or charter of any incorporated town or city in the state, shall have full power and authority to sentence such convict to hard labor as provided in this chapter.

§ 3, c. 36, 1879. **§ 8624. When marshal shall superintend labor.** When the imprisonment is pursuant to the judgment of any court, police court, police magistrate of an incorporated city or town for the violation of any ordinance, by-law or other regulation, the marshal or other officer acting as such shall superintend the performance of the labor herein contemplated, and shall furnish the tools and materials, if necessary, at the expense of the city or town requiring the labor, and such city or town shall be entitled to the earnings of its convicts.

§ 4, c. 36, 1879. **§ 8625. For what officer may punish convict.** The officer having charge of any convict for the purpose specified in this chapter may use such means as, and no more than are necessary to prevent escape, and if any convict attempts to escape either while going from or returning to the jail, or while at labor or at any time, or if he refuses to labor, the officer having him in charge, after due inquiry, may, to secure such person or to cause him to labor, use the means authorized by section 8629; provided, such punishment for refusal to work shall all be inflicted within the jail or jail inclosure, and shall not be considered as any part of the time for which the prisoner is sentenced.

§ 5, c. 36, 1879. **§ 8626. Credit for each day's labor.** For every day's labor performed by any convict under the provisions of this chapter, there shall be credited on any judgment for fine and costs against him the sum of two dollars.

§ 6, c. 36, 1879. **§ 8627. Cruel treatment by officer. Penalty.** If any officer or other person treats any prisoner in a cruel or inhuman manner, he shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

§ 7, c. 36, 1879. **§ 8628. Annoyance prohibited. Penalty.** The officer having such prisoner in charge shall protect him from insult and annoyance and communication with others while at labor and in going to and returning from the same, and he may use such means as are

necessary and proper therefor; and any person persisting in insulting and annoying or communicating with any prisoner after being first commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days.

§ 8629. **Punishment for disorderly conduct.** If any person confined in any jail upon a conviction or charge of any offense is refractory or disorderly, or if he willfully destroys or injures any article of bedding or other furniture, door or window, or any other part of such prison, the sheriff of the county after due inquiry, may chain and secure such person, or cause him to be kept in solitary confinement not more than three days for any one offense; and during such solitary confinement he may be fed with bread and water only, unless other food is necessary for the preservation of his health.

§ 8, c. 36, 1879.

§ 8630. **Escaping from penitentiary. Punishment.** Any person committed to the penitentiary who shall escape from or break said penitentiary with intent to escape therefrom, or who shall attempt by force or violence or in any other manner to escape from said prison, whether such escape is effected or not, shall, upon conviction thereof, be punished by imprisonment in said prison for a term not exceeding double the term for which he or she was so sentenced, to commence from and after the expiration of his or her former sentence.

§ 1, c. 89, 1883.
am'd.

§ 8631. **Escaping from jail. Punishment.** If any person who is imprisoned pursuant to a sentence of imprisonment in the county jail, or any person who shall be committed for the purpose of detaining him for trial for any offense not capital, shall break prison and escape, he shall be imprisoned in the county jail for the term of six months.

§ 644, C. Cr. P.
am'd.

§ 8632. **Same. Committed for capital offense.** If any person who is committed to prison for the purpose of detaining him for trial for a capital offense, shall break prison and escape, he shall be imprisoned in the penitentiary for the term of two years.

§ 645, C. Cr. P.
am'd.

§ 8633. **Prisoners in case of fire.** If any prison or any building thereto, shall be on fire and the prisoners shall be exposed to danger by such fire, the keeper may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid such danger, and such removal and confinement shall not be deemed an escape of such prisoners.

§ 646, C. Cr. P.

§ 8634. **Indigent person held for fine and costs.** When any poor convict shall have been confined in any prison for the space of six months, for the nonpayment of fine and costs only or either of them, the sheriff of the county in which such person shall be imprisoned shall make a report thereof to any two justices of the peace for such county; if required by such justices, the said keeper shall bring such convict before them, either at the prison or at such other convenient place thereto as they shall direct; the said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that such report is true and the convict has not had since his conviction any estate, real or personal, with which he could have paid the sum for the nonpayment of which he was committed, they shall make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison, and the sheriff shall forthwith discharge him.

§ 647, C. Cr. P.

§ 8635. **Sheriff to receive and hold United States prisoners.** All sheriffs, jailers, prison keepers, and their and each and every of all their deputies, within this state, to whom any person or

§ 648, C. Cr. P.

persons shall be sent or committed, by virtue of legal process issued by or under the authority of the United States, shall be and they are hereby enjoined and required to receive such persons into custody, and to keep them safely until they are discharged by due course of the laws of the United States; and all such sheriffs, jailers, prison keepers and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this state.

§ 649, C. Cr. P. **§ 8636. United States liable for expenses.** The United States shall be liable to pay for the support and keeping of said prisoners the same charges and allowances as are allowed for the support and keeping of prisoners committed under authority of this state.

§ 650, C. Cr. P.
am'd. **§ 8637. Jailers must report to United States courts.** Before every stated term of the United States court to be held within this state, the said sheriffs, jailers and prison keepers shall make out, under oath, a calendar of prisoners in their custody under the authority of the United States, with the date of their commitment, by whom committed and for what offense, and transmit the same to the judge of the district court of the United States for this district; and at the end of every six months they shall transmit to the United States marshal of this state, for allowance and payment, their account, if any, against the United States, for the support and keeping of such prisoners.

§ 651, C. Cr. P. **§ 8638. Prison established in every county.** There shall be established and kept in every county, by authority of the board of county commissioners and at the expense of the county, a prison for the safe keeping of prisoners lawfully committed.

§ 652, C. Cr. P.
am'd. **§ 8639. Grand jury shall examine county jails.** At each term of the district court at which a grand jury is impaneled, said jury shall make a personal inspection of the condition of the county jail, as to the sufficiency of the same for the safe keeping of persons confined therein, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last previous inspection; and the court shall give this duty in special charge to such grand jury, and it shall be imperative upon the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs, in accordance with the complaint or recommendation of the grand jury.

§ 653, C. Cr. P. **§ 8640. Sheriff or his deputy shall keep the jail.** The sheriff of the county by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept. He shall keep separate rooms for the sexes, except when they are lawfully married; he shall provide proper meat, drink and fuel for prisoners.

§ 654, C. Cr. P. **§ 8641. County board to allow charges for keeping prisoners.** Whenever a prisoner is committed for crime or in any suit in behalf of the state, the county board shall allow the sheriff his reasonable charge for supplying such prisoner.

§ 655, C. Cr. P. **§ 8642. Commitment. Authority of sheriff.** When a prisoner is confined by virtue of any process directed to the sheriff and which shall require to be returned to the court whence it issued, such sheriff shall keep a copy of the same, together with his returns made

thereon, which copy, duly certified by such sheriff, shall be prima facie evidence of his right to retain such prisoner in custody.

§ 8643. **Commitments to be indorsed and filed.** All instruments of every kind or attested copies thereof by which a prisoner is committed or liberated, shall be regularly indorsed and filed, and safely kept in a suitable box by such sheriff or by his deputy acting as a jailer. § 656, C. Cr. P.

§ 8644. **Same to be delivered to successor.** Such box with its contents shall be delivered to the successor of the officer having charge of the prison. § 657, C. Cr. P.

§ 8645. **Prisoner sent to jail of another county.** When there is no sufficient prison in any county wherein any criminal offense shall have been committed, any judge of the district court of such county upon application of the sheriff, may order any person charged with a criminal offense and ordered to be committed to prison, to be sent to the jail of the county nearest having a sufficient jail, and the sheriff of such nearest county shall, on exhibit of such judge's order, receive and keep in custody in the jail of his county, the prisoner ordered to be committed as aforesaid, at the expense of the county from which said prisoner was sent, and the said sheriff shall, upon the order of the district court or a judge thereof, redeliver such prisoner when demanded. § 658, C. Cr. P.

§ 8646. **Fugitives may be kept in any county jail.** Any county jail may be used for the safe keeping of any fugitive from justice or labor in this state, in accordance with the provisions of any act of congress, and the jailer shall, in such case, be entitled to reasonable compensation for the support and custody of such fugitive from the officer having him in custody. § 659, C. Cr. P.

§ 8647. **Juvenile prisoners.** Juvenile prisoners shall be treated with humanity and in a manner calculated to promote their reformation; they shall be kept, if the jail will admit of it, in apartments separate from those containing more experienced and hardened criminals; the visits of parents, guardians and friends, who desire to exert a moral influence over them, shall at all reasonable times be permitted. § 660, C. Cr. P.

CHAPTER 20.

HABEAS CORPUS.

§ 8648. **Persons restrained may prosecute the writ.** Every person imprisoned or restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and thereby (except in the cases specified in the next section), obtain relief from such imprisonment or restraint if it is unlawful. § 651, C. Cr. P. am'd.

§ 8649. **Who not entitled to relief.** The person in whose behalf the application is made is not entitled to relief from imprisonment or restraint under a writ of habeas corpus, if the time during which such person may be legally detained in custody has not expired, whenever it appears:

1. That he is detained in custody by virtue of process issued by any court or judge of the United States in a case where such court or judge has exclusive jurisdiction; or,

2. Except as provided in section 8662, that he is detained in custody by virtue of the final order or judgment of any competent court of criminal jurisdiction or of any process issued upon such order or judgment.

§ 672, C. Cr. P.
am'd.

§ 8650. Application for writ. Contents. Verification. Application for the writ must be made by petition signed either by the person for whose relief it is intended or by some person in his behalf, and must specify:

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties if they are known, or describing them if they are not known.

2. The cause or pretense of such confinement or restraint according to the knowledge or belief of the party verifying the petition.

3. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof shall be annexed, or it shall be averred that by reason of such person being removed or concealed before application, a demand of such copy could not be made, or that such demand was made and the legal fees therefor tendered to the officer or person having such person in custody, and that such copy was refused.

4. If the imprisonment is alleged to be illegal, the petition shall state in what the illegality consists.

5. The petition must be verified by the oath or affirmation of the person making the application.

§ 689, C. Cr. P.
am'd.

§ 8651. By what court application granted. The writ of habeas corpus must be granted:

1. By the supreme court or any judge thereof, upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court or any judge thereof, or before any district court or judge thereof.

2. By the district courts or a judge thereof, upon petition by or on behalf of a person restrained of his liberty in their respective districts.

When application is made to the supreme court, or to a judge thereof, proof by the oath of the person applying or other sufficient evidence shall be required that the judge of the district court having jurisdiction by the provisions of subdivision 2 of this section is absent from his district or has refused to grant such writ, or for some cause to be specially set forth is incapable of acting, and if such proof is not produced the application shall be denied.

§ 8652. When court must grant the writ. The court or judge authorized to grant the writ to whom a petition therefor is presented, must, if it appears that the writ ought to issue, grant the same without delay, and the writ shall not be denied for any informality in the petition or for any want of matters of substance if the same can be supplied, and the court or judge to whom application is made, must point out the matters wanting and direct the manner of supplying the same.

§ 8653. Direction and form of writ. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to

have the body of such person before the court or judge before whom the writ is returnable, immediately, at a place therein specified (or at some specified time), regard being had to the circumstances and the distance to be traveled.

Every writ of habeas corpus issued under the provisions of this chapter shall be substantially in the following form:

State of North Dakota, }
County of..... } ss.

The state of North Dakota to the sheriff of.....etc. (or to)

You are hereby commanded to have the body of.....by you imprisoned and detained, as it is alleged, together with the time and cause of such imprisonment and detention, by whatever name the said.....shall be called or charged, before.....judge of the district (or supreme) court, (or before the district or supreme court, as the case may be), at..... (naming the place) on..... (naming the date) (or immediately upon the receipt of this writ) to do and receive what shall then and there be considered concerning the said.....and have you then and there this writ.

Witness, etc.

Such writ must be indorsed "By the habeas corpus act" and if issued by the court it shall be under the seal of the court; if by the judge it shall be under his hand.

§ 8654. Manner of serving the writ. Whenever the writ is directed to the sheriff or other ministerial officer of the court out of which it is issued, it must be delivered by the clerk or by such person as it may be entrusted to, without delay as other writs are delivered to such sheriff or other officer for service, or it may be left with the jailer, keeper or other person under such sheriff or other officer in charge of and at the jail or place where the person seeking the writ may be imprisoned or restrained. If it is directed to any other person it may be delivered to the sheriff or his deputy and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling house or of the place where the party is confined or under restraint. In any case the court or judge thereof issuing the writ, may at his discretion authorize any person to serve and deliver it by an entry signed by him thereon to the following effect: "I hereby authorize to serve the within writ," and service made by such person in the manner designated in this section shall be due and lawful service.

§ 8655. Penalty if officer refuses to execute and return writ. If the person to whom the writ is directed refuses after service, to obey the same, the court or judge, upon affidavit stating such facts, must issue an attachment against such person, directed to the sheriff or coroner commanding him forthwith to arrest such person and bring him immediately before such court or judge; and upon being so brought he must be committed to the jail of the county until he makes due return to such writ or is otherwise legally discharged. The person disobeying such writ shall also forfeit to the person

§ 681, C. Cr. P.
am'd.

imprisoned or restrained a sum not exceeding five hundred dollars. and if an officer he shall be incapable of holding or executing his said office.

§ 8656. What the return must set forth. The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody or under his power or restraint.

2. If he has the party in his custody or power or under his restraint, he must state the authority and cause of such imprisonment or restraint.

3. If the party is detained by virtue of any writ, warrant or other written authority, a copy thereof must be annexed to the return and the original produced and exhibited to the court or judge on the hearing of such return.

4. If the person upon whom the writ is served had the party in his custody or power or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place.

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer and makes such return in his official capacity, it must be verified by his oath or affirmation.

§ 8657. Party restrained must be brought. Exception. The person to whom the writ is directed if it is served, must bring the body of the party in custody or under his restraint, according to the command of the writ, except in cases specified in the next section.

§ 8658. When party need not be brought. When from sickness or infirmity of the person directed to be produced he cannot without danger be brought before the court or judge, the person in whose power or custody he is, may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

§ 8659. When hearing must be had. The court or judge before whom the writ is returned must, immediately after the return or with five days thereafter, proceed to hear and examine the return, and such other matters as may be properly submitted to his consideration.

§ 8660. Return may be controverted. Proofs. The party brought before the court or judge on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof or allege any fact to show either that the imprisonment or detention is unlawful or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and has full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and

perform all other acts and things necessary to a full and fair hearing and determination of the case. The court or judge may allow the return to be amended according to the facts of the case, whenever it may be deemed necessary.

§ 8661. When person restrained must be discharged. If no legal cause is shown for the imprisonment or restraint or for the continuation thereof, such court or judge must discharge such party from the custody or restraint under which he is held.

§ 8662. Causes for discharge of person restrained. If it appears on the return of the writ that the party is in custody by virtue of process from any court of this state or judge or officer thereof, such person may be discharged in any of the following cases, subject to the restrictions of section 8649 of this code: § 673, C. Cr. P.
am'd.

1. When the jurisdiction of such court or officer has been exceeded.

2. When the imprisonment was at first lawful, but by some act, omission or event which has taken place afterward, the party has become entitled to a discharge.

3. When the process is defective in some matter of substance required by law rendering such process void.

4. When the process though regular in form has been issued in a case not allowed by law.

5. When the person having the custody of the party is not the person allowed by law to detain him.

6. When the process is not authorized by any order or judgment of any court nor by any provisions of law.

7. When a party has been committed on a criminal charge without reasonable or probable cause.

8. When the process appears to have been obtained by false pretense or bribery.

§ 8663. Informal commitment from justice of the peace. If the person is committed to prison, or is in custody of an officer on a criminal charge, by virtue of a warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment. § 673, C. Cr. P.
am'd.

§ 8664. Procedure when person appears to be guilty. If it appears to the court or judge, by affidavit or otherwise or upon inspection of the process or warrant of commitment, and proceedings as may be shown to the court or judge, that the party is guilty of a criminal offense or ought not to be discharged, such court or judge, although the charge is defectively or not substantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witness to be subpoenaed to attend at such time as ordered, to testify before the court or judge, and upon the examination he may discharge such party, admit him to bail if the offense is bailable, or recommit him to custody, as may be just and legal.

§ 8665. Habeas corpus to give bail. Whenever a person is imprisoned or detained in custody on a criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined. Any judge in or out of the court in which he is authorized to act may take an undertaking of bail from any person who has been committed on a criminal charge, when brought before him on a writ of habeas corpus, as in other

cases if the offense is bailable, and file the undertaking in the proper court.

§ 675, C. Cr. P.
am'd.

§ 8666. Procedure when person not entitled to discharge. If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not admitted to or bailed when allowable, the court or judge must remand him to custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, is legally entitled thereto.

§ 8667. Prisoner may be ordered to custody of proper officer. In cases where any party is held under illegal restraint or custody, or any other person entitled to the custody or restraint of such party, the court or judge may order such party to be committed to the custody or restraint of such person as is by law entitled thereto.

§ 8668. How person disposed of before judgment. Until judgment is given on the return, the court or judge before whom any party may be brought on such writ, may commit him to the sheriff of the county or place him in such care or under such custody as his age or circumstances may require.

§ 8669. When notice of hearing must be given state's attorney. When it appears that the person in whose behalf a writ of habeas corpus is issued, is held upon a criminal charge of any kind, notice of the time and place of the hearing upon the return must be given to the state's attorney of the county where the offense arose if he is within his county; in other cases, like notice shall be given to any person interested in continuing the custody or restraint of the party asking aid of such writ.

§ 671, C. Cr. P.
am'd.

§ 8670. Person taken out of county. Expenses. When ever the officer or person to whom a writ of habeas corpus is directed and delivered, is required thereby to make return and take the person in whose behalf the writ is issued into a county other than the county in which such person is imprisoned or restrained, the court or judge awarding the writ may, at his discretion, ascertain and by an entry thereon specifying the amount, but not exceeding fifteen cents per mile, require the payment or tender, at the time of delivering the writ, of the charges of obeying the same; but in no case when such entry is not made can the payment or tender of such charges be demanded before the return of the writ in accordance with its direction.

§ 8671. Writ must not be disobeyed. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appears therefrom in whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

§ 677, C. Cr. P.
am'd.

§ 8672. When person discharged may be again arrested. No person who has been discharged by the order of the court or judge upon habeas corpus can be again imprisoned or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge and is afterwards committed for the same offense, by legal order or process.
2. If, after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal action, the accused is again arrested on sufficient proof and committed by legal process for the same offense.

3. If in a civil action the party has been discharged for any illegality in the order, judgment or process and is afterwards imprisoned by legal process for the same cause of action.

§ 8673. How obedience to order of discharge enforced. Obedience to an order for the discharge of any person, granted pursuant to the provisions of this chapter, may be enforced by the court, or judge issuing such writ, or granting such order, by attachment, in the same manner as hereinbefore provided for a neglect to make a return to a writ of habeas corpus; and the person guilty of such disobedience shall forfeit to the party aggrieved five hundred dollars, in addition to any special damages such party may have sustained.

§ 8674. Person restrained in danger of being taken out of jurisdiction. Warrant. When it appears to any court or judge authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts and directed to the sheriff, coroner or a constable of the county, commanding such officer to take such person thus held in custody, confinement or restraint, and forthwith bring him before such court or judge to be dealt with according to law. The court or judge may also insert in such warrant a command for the arrest of the person charged with such illegal detention and restraint.

§ 8675. Execution of warrant. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant, but if such warrant is issued by the supreme court or a judge thereof, upon the return of the warrant, the hearing and decision of the matter may be ordered by such court or judge to be had before the district court of the proper county or the judge thereof.

§ 8676. Return to warrant. Procedure. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs and trial may thereupon be had as upon a return to a writ of habeas corpus.

§ 8677. When person must be discharged. If such party is held under illegal custody or restraint he must be discharged, or if not, he must be restored to the care or custody of the person entitled thereto.

§ 8678. When writ may be served. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

§ 8679. Accused liberated for want of prosecution. If any person shall be committed for a criminal or supposed criminal matter and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offense, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner; if such court at the second term shall be satisfied that due exertions have been made to procure

§ 678, C. Cr. P.
am'd.

the evidence for and on behalf of the state, and that there are reasonable grounds to believe that such evidence may be procured at the third term, it shall have power to continue such case till the third term; if any such prisoner shall have been admitted to bail for a crime other than a capital offense, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the state are absent, such witnesses being mentioned by name, and the court shown wherein their testimony is material.

§ 679, C. Cr. P.

§ 8680. Writ not allowed to delay trial. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on habeas corpus under this chapter out of the county in which he is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him into the county where the offense with which he stands charged is properly cognizable.

§ 680, C. Cr. P.
am'd.

§ 8681. Prisoners shall not be removed from one prison to another. Exceptions. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper or other person, or his underofficer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody, into other prison or custody, unless it be by habeas corpus or some other legal writ; or when the prisoner shall be delivered to the constable or other inferior officer, to be carried to some common jail; or shall be removed from one place to another within the county, in order to his discharge or trial in due course of law; or in a case of sudden fire, infection or other necessity, or when the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the chapters concerning jails and jailers; or when the prisoner in pursuance of a law of the United States, may be claimed or demanded by the executive of the United States, or territories; if any person shall, after such commitment as aforesaid, make out, sign or countersign any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved in the manner hereinafter mentioned.

§ 681, C. Cr. P.

§ 8682. Penalty if judge refuses or delays writ. Any judge empowered by this act to issue writs of habeas corpus, who shall corruptly refuse to issue such writ when legally applied to, in a case when such writ may lawfully issue, or who shall, for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or party aggrieved a sum not exceeding five hundred dollars.

§ 683, C. Cr. P.

§ 8683. Removing or concealing prisoner to avoid writ. Anyone having a person in his custody or under his restraint, power or control, for whose relief a writ of habeas corpus is issued, who, with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him under the control of another, or shall conceal him or change the place of his confinement with intent to avoid the operation of such writ, or with intent to remove him out of this state, shall forfeit for every such offense one thousand dollars, and be imprisoned in the penitentiary not less than one year, nor

more than five years; in any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of habeas corpus had issued at the time of the removal, transfer or concealment therein mentioned, if it is proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

§ 8684. Officer refusing prisoner copy of commitment. § 684, C. Cr. P.

Penalty. Any sheriff or his deputy, any jailer or coroner, having custody of any prisoner committed on a civil or criminal process of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order or commitment by virtue of which he is imprisoned, within six hours after the demand made by said prisoner, or anyone on his behalf, shall forfeit five hundred dollars.

§ 8685. Penalty for rearresting on same charge. Any § 685, C. Cr. P.

person who, knowing that another has been discharged by order of a competent judge or tribunal on a habeas corpus, shall, contrary to the provisions of this chapter, arrest or detain him again for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense, and one thousand dollars for every subsequent offense.

§ 8686. All penalties inure to use of party aggrieved. § 686, C. Cr. P.

All the pecuniary forfeitures under this chapter shall inure to the use of the party for whose benefit the writ of habeas corpus issued, and shall be sued for and recovered with costs, in the name of the state, by every person aggrieved.

§ 8687. Recovery of penalties no bar to civil action. The § 688, C. Cr. P.
recovery of the said penalties shall be no bar to a civil suit for damages.

§ 8688. Writ may issue for witness. Discharge of bail. § 689, C. Cr. P.

The supreme and district courts within this state, or the judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any jail within the same before them, to testify or be surrendered in discharge of bail. When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this state out of the county in which such principal or witness is required to be surrendered, or to any county in this state, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall, by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively.

CHAPTER 21.

GENERAL PROVISIONS.

§ 8689. Code construed as continuation of statutes. The provisions of this code so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments.

§ 8690. When this code governs. The provisions of this code so far as they relate to procedure, or alleviate the punishment to be imposed upon conviction in any case, shall govern in all criminal actions in any way prosecuted or tried after the date upon which it takes effect whether the offense was committed before or after such date.

REPEALS.

SECTIONS AND CHAPTERS OF THE CODES OF 1877 AND SUBSEQUENT LAWS EXPRESSLY REPEALED.

Repeals. There are hereby expressly repealed:

1. The following acts passed at the twelfth session of the legislative assembly of the territory of Dakota in the year 1877: Chapters 1 to 50 inclusive of the political code of 1877.

2. The following sections of the civil code passed at the twelfth session of the legislative assembly of the territory of Dakota in the year 1877: Sections 3, 13, 14, 26, 54, 55, 56, 59, 60, 61, 64, 66, 69, 79, 80, 82, 96, 110, 111, 112, 113, 114, 115, 140, 141, 143, 153, 274, 316, 374, 376, 380, 381, 382, 383, 384, 385, 386, 387, 388, 394, 396, 398, 399, 402, 403, 406, 407, 408, 409, 411, 412, 413, 414, 415, 416, 439, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 478, 482, 485, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 512, 519, 520, 521, 522, 523, 524, 525, 526, 538, 539, 540, 542, 543, 546, 547, 548, 549, 550, 562, 567, 569, 648, 659, 668, 681, 683, 687, 707, 756, 757, 758, 775, 808, 853, 866, 889, 911, 968, 1062, 1076, 1097, 1098, 1100, 1110, 1448, 1481, 1492, 1544, 1645, 1713, 1716, 1718, 1735, 1748, 1753, 1754, 1803, 1812, 1813, 1814, 1826, 1845, 1852, 1889, 1945, 1953, 1954, 2011, 2012, 2024, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046 and 2116.

3. The following sections of the code of civil procedure passed at the twelfth session of the legislative assembly of the territory of Dakota in the year 1877: Sections 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 42, 51, 52, 53, 54, 56, 59, 62, 63, 66, 67, 68, 74, 80, 84, 88, 94, 95, 97, 98, 101, 102, 104, 106, 107, 109, 126, 133, 136, 138, 145, 149, 153, 165, 189, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 229, 233, 236, 261, 262, 263, 271, 276, 277, 279, 280, 281, 282, 283, 284, 287, 288, 290, 295, 299, 306, 307, 314, 322, 324, 325, 332, 333, 339, 341, 378, 379, 380, 382, 387, 388, 390, 395, 396, 430, 439, 440, 441, 446, 453, 454, 455, 456, 457, 458, 470, 474, 475, 476, 478, 479, 484, 485, 488, 489, 490, 491, 492, 493, 494, 498, 499, 503, 504, 505, 506, 507, 514, 518, 531, 532, 533, 534, 535, 536, 539, 542, 543, 544, 545, 546, 547, 553, 597, 598, 599, 600, 601, 602, 603, 604, 606, 609, 610, 611, 613, 614, 615, 616, 621, 623, 627, 631, 632, 635, 651, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 670, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 685, 688, 692, 702, 712, 717, 722, 723, 726, 727, 732, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 749, 750, 751, 752, 753, 754 and chapter 39 of said code.

REPEALS.

4. The following sections of the probate code passed at the twelfth session of the legislative assembly of the territory of Dakota in the year 1877: Sections 1 to 390 inclusive.

5. The following sections of the justices' code passed at the twelfth session of the legislative assembly of the territory of Dakota in the year 1877: Sections 1 to 142 inclusive and sections 1 to 5 inclusive of chapter 3 of said code.

6. The following sections and chapters of acts passed at the thirteenth session of the legislative assembly of the territory of Dakota in the year 1879: Chapters 1, 2, 3, 6; section 1, chapter 9; chapters 10, 12, 13, 15, 17, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 37, 38, 44, 45; sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 22, 23, 26, 27, 28 and 29, chapter 46; chapters 48, 49, 50; section 3, chapter 51; chapters 52, 53, 54, 56, 58, 59, 60, 61, 62, 63, 64, 65 and the following special laws passed at said session: An act entitled "An act to amend section 36 of chapter 27 of the political code" and an act entitled "An act to amend section 54 of chapter 29 of the political code."

7. The following sections and chapters of acts passed at the fourteenth session of the legislative assembly of the territory of Dakota in the year 1881: Chapters 1, 3, 4, 5, 6, 12, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 32; sections 1, 2, 3 and 4, chapter 33; chapters 34, 35, 36, 37, 39, 42, 43, 45, 46, 47, 48, 54, 55, 56, 58, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 137, 139, 140, 142 and the following special laws passed at said session: Chapters 3, 7, 11, 12, 21, 22, 23, 24, 25, 26, 28, 31, 32, 39, 48, 50, 51, 58, 60, 64, 71 and 72.

8. The following sections and chapters of acts passed at the fifteenth session of the legislative assembly of the territory of Dakota in the year 1883: Chapters 2, 3, 4, 5, 6, 7, 8; section 2, chapter 11; chapters 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 27, 31, 34, 35, 40, 41, 43, 47, 48, 49, 50, 51, 52, 53, 54; section 3, chapter 55; chapters 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 90, 91; section 2, chapter 92; chapters 93, 94, 95, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116 and the following special laws passed at said session: chapters 1, 7, 10, 13, 17, 18, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42 and 43.

9. The following sections and chapters of acts passed at the sixteenth session of the legislative assembly of the territory of Dakota in the year 1885: Chapters 3, 4, 5, 6, 7, 8, 9, 13, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 34; section 3, chapter 35; chapters 36, 37; section 2, chapter 39; chapters 40, 41, 43, 45, 46, 47, 48, 52, 53, 54; section 3, chapter 55; chapters 57, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 102, 103, 104, 109, 110, 111, 112, 113, 114, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 148, 149, 150, 151 and an act entitled "An act to prevent the spread of noxious weeds in the territory of Dakota" and the following special laws passed at said session: Chapters 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 16, 18, 20, 21, 22, 25, 26, 29, 35, 36, 37, 38, 40, 41, 44, 45, 48, 49 and 50.

REPEALS.

10. The following sections and chapters of acts passed at the seventeenth session of the legislative assembly of the territory of Dakota in the year 1887: Chapters 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18; section 2, chapter 19; sections 2, 3, 4, 5, 6, 7, 8, 9, chapter 21; chapters 22, 24, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 64, 66; sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 13, 14, 16, 17, 18 and 19, chapter 67; chapter 68; section 3, chapter 69; chapters 70, 71, 72, 73, 75, 76, 77, 78, 79, 80, 81, 82, 84, 97, 98, 99, 100, 104, 105, 106, 107, 108, 109, 110, 111, 112, 114, 116, 119, 121, 122, 123, 124, 125, 130, 134, 135, 136, 139, 140, 141, 142, 143, 144, 145, 147, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 163, 168, 170, 172, 173, 174, 175, 185, 186, 188, 189, 190 and 195.

11. The following sections and chapters of acts passed at the eighteenth session of the legislative assembly of the territory of Dakota in the year 1889: Chapters 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39; sections 1, 2, 3, 5, 6, 7, 8, 10 and 11, chapter 40; sections 1 and 2, chapter 41; chapters 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 108, 109, 110, 111; sections 1 and 3, chapter 112; chapters 113, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131 and 132.

12. The following sections and chapters of acts passed at the first session of the legislative assembly of the state of North Dakota in the year 1890: Chapters 1, 8, 9, 10, 18, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 71, 73; section 4, chapter 74; chapters 75, 76, 77; section 1, chapter 78; chapters 79, 80, 81, 82, 85, 86, 87, 88, 89, 90; sections 3, 5, 6, 7 and 15, chapter 91; chapters 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 111, 113, 114, 115, 116, 117, 118, 119, 120, 121; sections 6, 7 b, 8 a, 8 b, 9, 10 a, 17 a, 18 a, 18 c, chapter 122; sections 1, 2, 3 and 4, chapter 123; chapters 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 169, 170, 171, 172, 175, 176, 177, 178, 179, 180, 181, 182, 183, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 196 and 199.

13. The following sections and chapters of acts passed at the second session of the legislative assembly of the state of North Dakota in the year 1891: Chapters 1, 2, 3; sections 2, 3, 4 and 6, chapter 4; chapters 5, 7, 8, 9, 10, 11, 32, 33, 34, 35, 38, 39, 40, 43, 44, 45, 46, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 65, 66; sections 1, 4, 5, 6, 8, 9, 11, 13, 15, 18, 19, 20, 21, 22 and 23, chapter 67; chapters 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 94, 95, 97, 98, 99, 100, 102, 105, 107, 110, 111, 112, 113, 114, 115, 116, 117, 119; sections 3, 4, 5, 15 and 25, chapter 120; chapters 121, 123, 125, 126, 127, 132 and 133.

14. The following sections and chapters of acts passed at the special session of the legislative assembly of the state of North Dakota held in the year 1892: House bill number 1; sections 1 and 2 of house bill number 2; house bills numbers 5 and 6; senate bills numbers 1 and 2.

REPEALS.

15. The following sections and chapters of acts passed at the third session of the legislative assembly of the state of North Dakota in the year 1893: Chapters 23, 25; sections 2, 4, 27 and 33, chapter 27; chapters 31, 32, 33, 34, 35, 36, 38, 39, 40, 41; section 3, chapter 42; chapters 43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 76, 77, 78, 79, 80, 81, 88, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101; section 2, chapter 102; chapters 103, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 125, 126, 127, 129; section 3, chapter 131; chapters 132, 133, 134 and 135.

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